Public Utilities

FORTNIGHTLY

December 21, 1939

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Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

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Merry Christmas

and

A Happy New Year

PUBLIC UTILITIES FORTNIGHTLY
WASHINGTON, D. C.

Pages with the Editors

ANOTHER year draws to a close and again we have the pleasure of extending to the many kind friends of PUBLIC UTILITIES FORTNIGHTLY our sincere wishes for a good old-fashioned Merry Christmas and the happiest of New Years. Because 1939 trailed in its wake so much world misery, and leaves even our own beloved America thrashing about in a state of uncertainty and anxiety, it becomes all the more important to us to break the toll-taking tension with a return to the full flavor of this beautiful traditional season. Now, more than at any time within the last two decades, we should appreciate the significance of the coming of the Prince of Peace. Now, we have special need for the renewed hope and courage that is associated with the New Year.

So much has happened during the past year —so much that makes hardly pleasant reading—that we are tempted to pass gingerly over the usual recapitulation of events which is customary with the final annual issue of any publication. The situation recalls a remark once made by a hot-headed college student, who became so annoyed, when served a plate of very debatable hash, that he sailed it right out of the refectory window. The prefect of discipline demanded an explanation of such conduct and the youth replied, referring to the ingredients of the hash: "These items were unpleasant enough when they first occurred; why are we now asked to review them?" And so, if it is all the same to our readers, we shall just take a running glance at the high spots of 1939 and let it go at that.

HERBERT COREY

The new "absentee control" in Washington is making a piker of the old "absentee management" of Wall Street.

(SEE PAGE 787)

C. EMERY TROXEL

Where competition leaves off, regulation must begin in fixing utility rates.

(SEE PAGE 796)

COMPARED with state politics in general, the regulatory situation was not so disturbing during 1939, at that. On the judicial front, the year was marked by Supreme Court decisions which (1) disqualified utility court attacks against the TVA and (2) overthrew the mischievous "negative order" doctrine limiting appeals from Federal regulatory boards. In the U. S. Circuit Courts, (1) San Francisco was upheld in its refusal to go into the electric business in order to use Hetch Hetchy power, and (2) the FPC, in the Appalachian Power Company Case was denied its jurisdictional claim over rivers, non-navigable in fact, but which may "affect interstate commerce." A 3-judge court in Pennsylvania upheld temporary rate making on a purely original cost basis. More will undoubtedly be heard of these lower court decisions during the coming year.

FROM the standpoint of both Federal and state legislation, 1939 was a fairly meager year compared with the average of the last decade. Congress killed the President's "splending" bill; financially crippled PWA; mildly hobbled TVA; exempted operators on small telephone exchanges from the wage-hour law; and worked out some sort of a compromise with rebellious New England states on flood-control policy. Ripper legislation ousted former regulatory commissions in Michigan and Rhode Island, but was blocked in Pennsylvania and Wisconsin. Tax revolt against the TVA broke out in several southern legislatures but only in Georgia was such legislation enacted. Alabama passed a law to eliminate the duplication of private utility systems by public works construction, which irritated Federal Works Administrator Carmody considerably. Ohio received a similar statute.

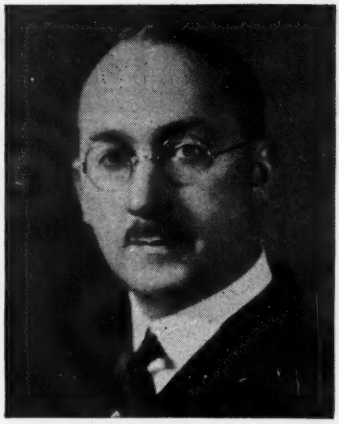
PUBLIC ownership of utilities had a bad year in 1939, losing a great majority of the municipal elections, including San Francisco's eighth negative vote last May. (The California and Wisconsin legislatures also treated public ownership proposals badly.) Lack of enthusiasm in financial circles torpedoed Nebraska's dream for a statewide publicly owned power monopoly. The split congressional committee report on TVA was most inconclusive.

SOME progress towards peace along this sector was seen in Bonneville's recent agreement to permit private utility distribution of Federal power in Portland, and in the Commonwealth & Southern's surrender of its Tennessee properties to the TVA at the relatively reasonable figure of $80,000,000 (even though the more skeptical may suspect that the latter settlement had a slightly "Munich" flavor in view of the subsequent revival of anti-utility bombardment by high officials).

THE passing of J. D. Ross was an irreplaceable loss for the exponents of public power operations. Sudden revival of Canadian interest in the St. Lawrence seaway pact indicates a new chance for that project in 1940. The appointment by President Roosevelt of a new National Power Policy Committee climaxed a year during which national defense was put forward as the latest protective coloring for the administration's power program.

IN the field of Federal commission activity the final report of the FCC on its special telephone investigation was probably the high spot, although the FPC took several important steps in the administration of its new regulatory powers over interstate natural gas operations and even ventured into the realm of retroactive licensing jurisdiction over hydro-electric plants constructed prior to the Federal Water Power Act of 1920.

THE SEC made important progress in its administration of the Holding Company Act, but is apparently not moving fast enough to suit utility critics in Congress. The FCC survived both Democratic and Republican attempts at ripper legislation and since the replacement of Chairman McNinch by Chairman Fly has become such a hardworking, harmonious body that much opposition to it has melted away. Other Federal commission appointments sent Commissioner Thompson to the FCC (replacing Sykes); Henderson to the SEC (replacing Douglas); Olds to the FPC (replacing McNinch); ex-Senator Pope to the TVA (replacing ex-Chairman Morgan).



OWEN ELY

Will Mars lay a heavy hand upon the field of public service?

(SEE PAGE 806)

OF course the principal event of the year in the utility field, as in any other field, was the outbreak of European hostilities which set utilities to speeding up construction programs in anticipation of rising costs and increasing service demands. In this connection we present in this issue an article by our financial editor, OWEN ELY, on the question of whether the war will handicap utilities.

ALSO in this issue is featured a discussion of the growing tendency towards Federal dictatorial control in Federal agencies by the well-known Washington author and journalist, HERBERT COREY; and an analysis of monopoly price fixing in the determination of utility rate schedules, by C. EMERY TROXEL of the faculty of Wayne University.

THE next issue will be out January 4th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 321–384, from 30 P.U.R.(N.S.)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

PRESS RELEASE
Association of American Railroads.

"Railway taxes now average nearly $1,000,000 a day."

JOSEPH C. O'MAHONEY
U. S. Senator from Wyoming.

"Industry in America has done wonderfully well, but not well enough."

RAYMOND MOLEY
Writing in Newsweek.

"This year the [spend-lend] schemes are apparently to be painted with military camouflage."

EDITORIAL STATEMENT
Longview (Texas) News.

"Those who propose pipe-line divorcement haven't any suggestions for separate maintenance."

BURTON K. WHEELER
U. S. Senator from Montana.

"Railroads are geared for mass production. There must be mass consumption of the services they offer."

ROBERT H. JACKSON
Solicitor General of the United States.

"The lawyers are the only group in a community who really know how well judicial work is being done."

MILLARD E. TYDINGS
U. S. Senator from Maryland.

"Free enterprise on the one hand and state socialism on the other will not long survive together in the same country."

JEAN C. WITTER
Former President, Investment Bankers Association of America.

"I believe more publicity and less regulation will cure most of the evils which prompted passage of the Securities Act."

E. C. STONE
Vice president and general manager, Duquesne Light Company.

"Perhaps the greatest danger confronting our [electric utility] industry at the present time is the possibility of too much self-complacency."

CHARLES KRAMER
U. S. Representative from California.

"The Public Works Administration is to be congratulated upon its fine record of achievement. I have yet to hear any adverse criticism of its operations."

FLOYD W. PARSONS
Editorial director, Gas Age.

"In recent years the life of the average business man has been very much like that of a fellow working in a fire house, or the emergency ward of a hospital."

ARTHUR H. VANDENBERG
U. S. Senator from Michigan.

"I think . . . it was a mistake for the government to get into the power business."

PAUL BELLAMY
Editor, Cleveland Plain Dealer.

". . . the preëxistent limitation against which all lawyers have to struggle, if they are to become effective agents of a better day, is the tendency to glorify the past."

EDITORIAL STATEMENT
Public Service Magazine.

"Always we have heard that a municipal utility floating alone in a sea of hostile utilities could not be expected to demonstrate the virtues of public ownership at its best."

WILLIAM H. HODGE
Associate publisher, Public Service Magazine.

"Only a congressional inquiry—impartial, fact finding, and nonpolitically objective—can separate the minimum of wheat from the maximum chaff in the public power conglomeration . . ."

ARTHUR T. ROBB
Editor, Editor & Publisher.

". . . we (speaking personally) prefer a public well served by the radio with press assistance than a public badly served by radio and subject to contradiction by a better informed press."

HARRY FLOOD BYRD
U. S. Senator from Virginia.

"Government efficiently and economically operated is our best protection against the undermining of democracy. . . . Financial preparedness is the greatest bulwark of national defense, and it is the greatest guaranty for national security.

PHILIP A. BENSON
President, American Bankers Association.

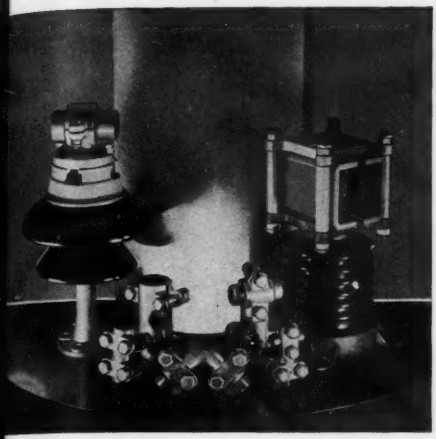
"In the name of social reform and sharing of wealth, we have trebled our national debt, levied burdensome taxes, and imposed governmental and production restrictions . . . which, unless they are relaxed, must result in a lowering of our standard of living."

HARRY L. HOPKINS
U. S. Secretary of Commerce.

"I have yet to see an unemployed man receiving a government benefit, dignified as it may be, who did not prefer private employment. . . . I have yet to see a business man who did not prefer to give these men work, if he could, rather than pay them wages in the form of taxes to be expended by the government."

CARL A. HATCH
U. S. Senator from New Mexico.

"No industry has sought the good graces of government more than has the transportation industry. No industry requires the good graces of government more than does the transportation industry; and no industry can benefit more from a friendly, sympathetic understanding of its problems, and from an honest effort to solve those problems, than can the transportation industry."



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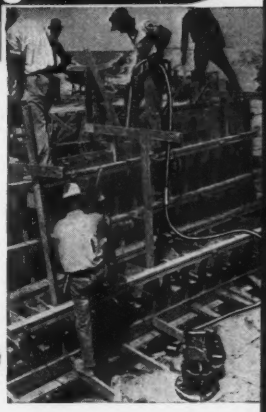

Right—Vibrating concrete with a MALL 3 H.P. unit on thin wall section.

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MALL TOOL COMPANY
7724 SOUTH CHICAGO AVENUE CHICAGO, ILLINOIS

Boiler Research ... In Perspective

In its earlier stages, boiler research was largely, if not solely, of a simple, elementary character—such as determining the flow of steam through each tube of a superheater tube-bank connected to common headers. B&W proudly referred to 80,000 readings logged in such a test.

A little later, research became more complicated, as more intricate technicalities became involved in the studies made. Typical of this stage were the investigations of stress lines in pressure vessels —studies made with photo-elastic models and polarized light.

Lately, the industry has entered a third stage. In this stage, research has gone beyond the scope of the laboratory and its most intricate of scientific devices, and has moved into the field. The very size of power-plant equipment prohibits laboratory analysis of all that takes place in a modern central-station boiler-unit.

Under these conditions, and with the new designs, new constructions, and new performance-levels that are being demanded today, the purchaser can profit by a dual evaluation. He will, of course, evaluate designs and constructions. But, he will profit far more from an appraisal of the manufacturer's experience or ability to make such designs practicable. This is the paramount consideration. It determines operating results.

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THE BABCOCK & WILCOX COMPANY
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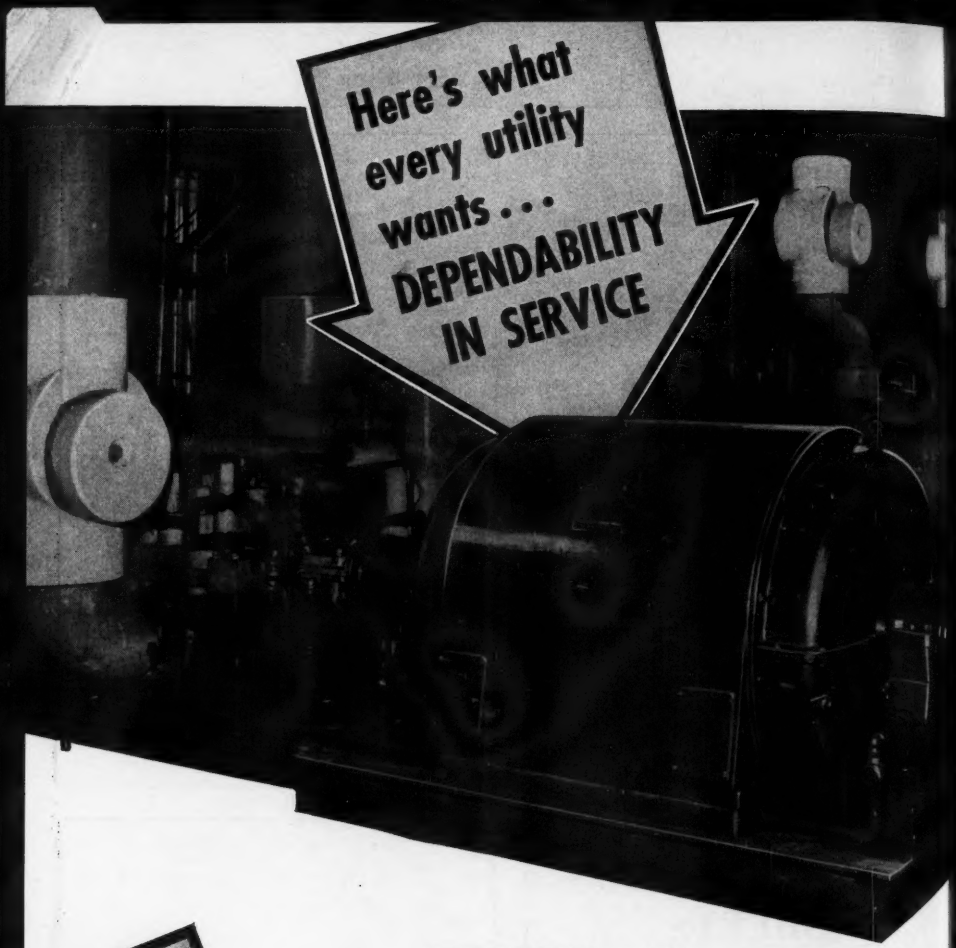
BABCOCK & WILCOX



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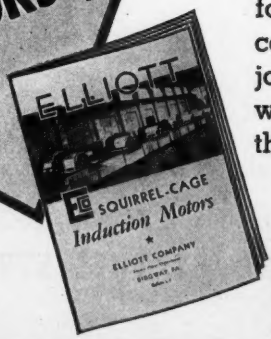
NDUCTION
MOTORS



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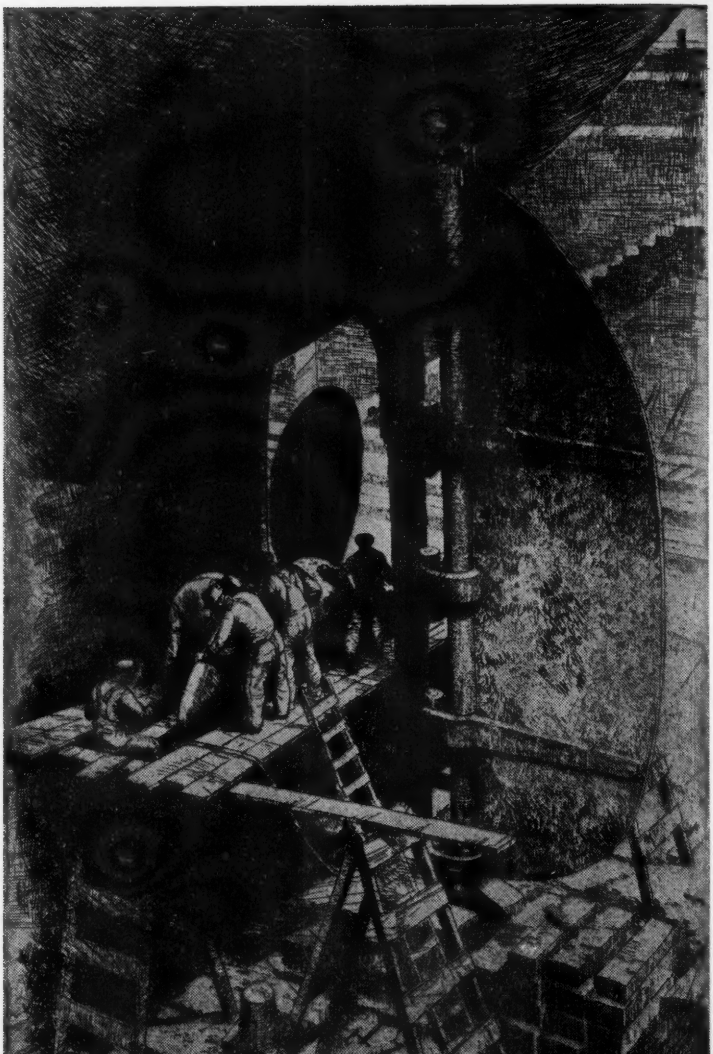
Utilities Almanack

DECEMBER

21	Th	¶ *Mid-West Shippers Advisory Board will hold meeting, Chicago, Ill., Jan. 4, 1940.*
22	F	¶ *Louisiana Engineering Society will hold annual meeting, New Orleans, La., Jan. 12, 13, 1940.*
23	Sa	¶ *Board of Governors of Investment Bankers' Association of America will hold winter meeting, Rye, N. Y., Jan. 12–14, 1940.*
24	S	¶ *American Society of Heating and Ventilating Engineers will hold convention and International Heating and Ventilating Exposition, Cleveland, Ohio, Jan. 22–26, 1940.*
25	M	¶ *Merry Christmas, 1939!*
26	Tu	¶ *Minnesota Telephone Association will convene for session, Minneapolis, Minn., Jan. 23–25, 1940.*
27	W	¶ *Tax Policy League opens convention, Philadelphia, Pa., 1939.* ¶ *American Economic Association starts meeting, Philadelphia, Pa., 1939.*
28	Th	¶ *American Water Works Association, New York Section, convenes, New York, N. Y., 1939.*
29	F	¶ *American Marketing Association ends 3-day convention, Philadelphia, Pa., 1939.*
30	Sa	¶ *American Statistical Association concludes 4-day meeting, Philadelphia, Pa., 1939.*
31	S	¶ *American Institute of Electrical Engineers will hold winter convention, New York, N. Y., Jan. 22–26, 1940.*

JANUARY

1	M	¶ *Happy New Year, 1940!*
2	Tu	¶ *National Electrical Manufacturers Association will hold mid-winter conference, New York, N. Y., Feb. 5–9, 1940.*
3	W	¶ *Southern Gas Association will hold annual convention, Hot Springs, Ark., Feb. 12–14, 1940.*



Etching by James E. Allen *Courtesy, Kennedy & Co., N. Y.*

Drydock Men

Public Utilities
FORTNIGHTLY

VOL. XXIV; NO. 13 DECEMBER 21, 1939

The Growing Autocracy of The Federal Agencies

If these agencies have their way, declares the author, the utilities and other industries will be conducted by the bureaucrats and so will every man who makes a bid to lay cinders on a mule path.

BY HERBERT COREY

THIS article must begin with a kind of a Buchmanite confession. The writer began his inquiry into the subject in a high state of fever. He has gradually simmered down until he is no more than blood warm. He has learned that:

There is something seriously wrong with the method of operation of 115 of the 130 or more administrative agencies; that everyone seems to be agreed on this; that Great Britain is the only other country which is as nearly democratic as the United States; that Great Britain has the same trouble; and that there is wide disagreement as to what should be done about it.

The chances are that nothing will be done about it during the 1940 session of Congress. The agencies have been moving their heavy artillery in line. Part way through the first session of Congress in 1939 it looked as though the agencies would be reformed into a high state of purity. It does not look that way today.

Yet it is a fact that the very considerable measure of freedom from control by Congress or the courts is a matter of high importance to every business man

in this country. The utilities are enormously concerned. Perhaps they are no more concerned than are the other industries, big and little. If the agencies have their way these industries will be controlled by the bureaucrats. So will every man who makes a bid to lay cinders on a mule path. The difficulty in reaching a hard and fast conclusion is that the agencies are partly right when they insist upon almost autocratic authority; but that they are also so wrong that the late U. S. Senator M. M. Logan of Kentucky, a Democrat, a former judge of his state's supreme court, a churchman who was a fairly consistent New Dealer, said that, if not checked, our constitutional form of government is done for.

"We would have," said he, "a government of men and not of laws."

One of the Federal circuit courts, in passing on a case in which a defiant Federal agency was involved, said in effect:

"If Federal agencies were permitted to operate on this plan, we might as well lock up the court rooms and throw away the keys. The courts would be useless."

THE task of writing an article about this administrative despotism is further complicated by the fact that its beginnings can be traced back to 1855. It is not to be charged against any single administration or any political party. No man on either side of the controversy identified by this writer is not honest and sincere and, above all else, not convinced. No one has attempted to minimize the immense importance of the question at issue. Both sides agree that it may be a single facet of a world-wide change in forms of government. In this case we may be sinking back into South American methods; or we may be taking a stance from which we can start democracy in fuller operation again.

As a further conclusion it may be said that the dispute is intensely bitter.

An attempt will be made to state the facts without undue heat. An illustration may be interpolated at this point in order to clarify the situation. A Federal statute gives the Federal Power Commission authority over utility companies which seek to erect dams on navigable waters. This is an obviously justifiable use of the Federal power. If utility companies were permitted to dam streams at will, certain navigable waters would quickly cease to be navigable. But the FPC maintains that it is the sole judge of what is a navigable stream, and that it has the power to forbid the erection of hydraulic works in streams emptying into navigable waters, on the ground that such feeder streams affect the navigability of the main watercourse. (See also p. 834.)

It, therefore, forbade the Appalachian Electric Power Company to build a dam on a site near Radford, Va. The river itself is possibly only navigable by rowboats. It is not suggested that any water is being wasted by the company. The water flows through the turbines and is returned to the little river and then flows downstream to the principal water. The company held that the FPC's action was an unwarranted use of a power which does not in fact exist. As some one has said:

"If that doctrine were to be accepted, the navigability of the Mississippi river may begin in the spring house on John Jones' farm in Minnesota."

If the FPC's contention is finally accepted by the courts, it would be able to hold 1,200 small water-power plants in trespass, although they had been built in strict accord with the law as then construed. It could compel them to take out licenses, which means that at the end of fifty years the hydraulic plant may be taken over by the government. Judge Paul in the western district of Virginia ruled against the FPC in a bristling opinion.

"This is a strained and unnatural construction of the law," he said in effect. "If it is upheld, the FPC could merely by its own declaration (not appealable or reversible by the courts) prohibit the erection of any dam, no matter how small, on any watercourse, no matter how tiny."

The FPC appealed from this decision to the circuit court, which upheld the decision of the lower court, one judge dissenting. In the end the case will no doubt reach the Supreme Court. The significance of the case, so far as this article is concerned, is not in the ultimate decision by the high court. That decision, whatever it may be, will be of great importance to the utility industry, for it would foreshadow far-reaching action in the hydroelectric branch. But to the rest of us it is a perfect illustration of the growing effort on the part of the Federal agencies to construe laws to suit themselves. They place themselves above the law, as Senator Logan put it. They even defy the authority of the courts, as in a recent case in which the FCC is involved.

An application for permission to erect a broadcasting station in Pottsville had been denied by the FCC, and the applicant took the matter to the courts. They held that the grounds on which the FCC had denied the application were insufficient and ordered that the license be issued. The FCC continued to refuse the applicant. When the case was again taken to court the FCC alleged, in effect, that the second denial had been on the ground that new evidence had been discovered. The court did not like this at all.

"The FCC," it ruled, "should have obeyed the mandate of the court."

It is obvious, of course, that if a government bureau is free to disobey the order of a court, merely on the ground that "new evidence" has been discovered, there would be little use in going to court against the bureau. A government agent who cannot find enough "new evidence" to support that position, no matter what the case may be, is not worth his Federal salt. The applicant appealed again and the case is still going through the courts. Of this and similar cases Senator Logan said, when he wrote the report of the

¶ "It *is obvious, of course, that if a government bureau is free to disobey the order of a court, merely on the ground that 'new evidence' has been discovered, there would be little use in going to court against the bureau. A government agent who cannot find enough 'new evidence' to support that position, no matter what the case may be, is not worth his Federal salt.*"

Senate Judiciary Committee, signed by its eighteen members:

"Some of these agencies consider themselves above the statutes and show contemptuous disregard for both Congress and the courts."

It may be that the Department of Justice is not violating any statute or showing contemptuous disregard of any court in its recently devised plan of punishing by indictment. But it seems to this writer that this extremely clever scheme is another evidence of that autocratic attitude of the Federal agencies of which complaint has been made for years. Elihu Root wrote of these agencies in 1916 that:

"The powers that are committed to these regulating agencies, and which they must have if they are to do their work, carry with them great and dangerous opportunities of oppression and wrong. The rights of the citizen against them must be made plain."

And Dean Emeritus Roscoe Pound of Harvard said:

"Such things are driving us fast to an administrative justice, through boards and commissions, with loosely defined powers, unlimited discretion, and inadequate judicial restraints, which is at variance with the genius of our legal and political institutions."

So much for the introduction to the bright plan for punishing by indictment which has been worked out by Assistant Attorney General Thurman Arnold. He discovers an industry or an organization in what he believes to be wrongdoing. It may be that the offense is not wrongdoing in the eyes of the statute. It only appears wrong through Mr. Arnold's very brilliant spectacles. He orders that the offensive practice be changed. The industry or the organization, relying on its belief that this is a government of laws and not of men, replies in effect that:

"We didn't do it.

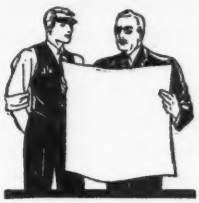
"Even if we did we have broken no law."

Whereupon Mr. Arnold secures an indictment. He explained his theory at interesting length to the oil men who held their convention at Atlantic City.

"I have power to punish in advance of trial," he said. "An indictment is in fact punishment in the court of public opinion."

Nothing in the statute authorizes punishment by publicity. The courts have so held. The SEC haled the Union Electric Company of Missouri into court on a charge that may or may not have been well founded. About the same time it brought the Bank of America before the bar on a "we-have-reason-to-believe" statement. In both cases the courts reprimanded the SEC. They stated in effect—this is not a verbatim quotation—that to air charges in public hearings is unfair. "The defendants are punished before conviction. There is nothing in the statute authorizing the publication of charges in advance of the court hearing. Pretrial publication of evidence amounts to punishment."

But unless there is some way of stopping such pretrial publication by the Federal agencies, the man or industry in conflict is punished with no chance of defense. No chance at all. Every newspaper man knows that a denial never catches up with the first story. Thurman Arnold was undoubtedly right when he said that he had the power to punish in advance of trial. There is nothing in the statutes, as the



Punishment by Publicity

"NOTHING in the statute authorizes punishment by publicity. The courts have so held. The SEC haled the Union Electric Company of Missouri into court on a charge that may or may not have been well founded. About the same time it brought the Bank of America before the bar on a 'we-have-reason-to-believe' statement. In both cases the courts reprimanded the SEC. They stated in effect . . . that to air charges in public hearings is unfair."

courts said, which authorizes him to do so. But he does do so. He is defiantly proud of doing so.

ONE more instance of the exercise of arbitrary power by a Federal agency and I will then get down to the meat of this article. These incidents are being used only to prove the truth of the contention that something is wrong and something should be done about it. The FPC forbade the Pacific Light & Power Company to engage in a merger. There is nothing in the laws forbidding a merger of the character proposed. It was not charged that any law had been violated. It was not alleged that the public would sustain any injury. But the FPC claimed the right to forbid the merger and did so on the stated ground that it would not do the public any good.

It was not shown that it would do the public any harm, either. So far as is stated, the public would not be affected, one way or another. I do not know whether the PL&P Company carried the case to court.

One more instance of arbitrary action by a Federal agency will be cited because it was such a very flagrant one —and because it worked so well. The ICC, in the plenitude of its wisdom, ordered the eastern railroads to reduce their fares charged on passenger trains. The railroads protested loudly that the ICC lacked legal authority to make or enforce such an order. One railroad refused to obey and offered to carry the case to court and the ICC did not accept the challenge. For their own reasons the eastern roads did not go to court and did obey the order and since then have kept modestly quiet about it. Test has shown that the ICC was right and the roads wrong and that the reduction in fares did increase the total take. But as a matter of law the roads still hold, even while blushing, that the law did not give the ICC the authority

to dictate to them how to operate.

THESE instances could be multiplied to the size of a book, for 115 of the 130, more or less, Federal agencies are charged with stepping out of the law in managing the affairs with which they are entrusted, and with defying the courts. No one, so far as I know, denies that this is the fact. It is insisted by some that if the freedom of action of these agencies is to be abridged—law or no law, courts or no courts—they will be unduly hampered in doing the business of the government. The other side maintains that the rule of law is far more important than the immediate efficiency of a Federal agency. They say that once law has been restored, efficiency will be quite as efficient as it has ever been under the rule of no-law. They say that efficiency will be more efficient than ever if all hands know what the rules are as they play the game. Deuces wild, they say, is an exciting pastime but not to be recommended as a career.

This is what has been done:

For some years the American Bar Association has been working on the problem of how to restore the Federal agencies to obedience. This part of the story will be ruthlessly shortened. The Logan-Walter bill (S. 915 and H. R. 6324, 76th Cong.), introduced in the Senate and House, is the bill suggested by the ABA's special committee, headed by O. R. McGuire, former counsel to the Comptroller General, former special assistant to various Attorneys General, and ex-Army officer. Mr. Logan was the junior Senator from Kentucky. Francis Walter is a member of the House from Pennsylvania. The Senate referred the bill to the Committee on the Judiciary. There Senator Logan convinced the full committee of eighteen members, and the bill was reported. The temper of the committee may be judged by a brief excerpt from the unanimous report:

> The basic purpose of this administrative law bill is to stem and if possible to reverse the drift into parliamentarianism, which if it should succeed to any substantial degree in this country could but result in totalitarianism with complete destruction of the division of governmental powers between the Federal and the state governments, with entire subordination of both the legislative and the judicial branches of the Federal government, to the executive branch, wherein are included the administrative agencies and tribunals of that government.—The time has come when some of these regulators consider themselves above the statutes.—These agencies must be required to observe the terms of the statutes and to exercise good faith in the administration of such statutes.

THE approaching subordination of state governments to Federal power, unless these agencies are checked, may be hinted at in a recent event in the South. The Alabama legislature enacted the Booth law, which required municipalities desirous of building publicly owned utility plants to make a "reasonable" offer for the property of the existing privately owned utility. The administrator of the REA wrote from Washington to the governor of Alabama to demand that the Booth law be repealed or modified. Otherwise he would refuse to grant the several million dollars he had been prepared to give to Alabama's towns for the purpose of building municipal plants. The administrator broke no law, so far as I am aware. But he certainly stepped over the line between the Federal government and the states, and what one agency can do all the others can.

"The present state of indescribable

confusion is due to the fact," wrote the Senate Judiciary Committee, "that Congress has ignored the development of the administrative process prior to 1861. . . ."

There is too much more of that report to permit further quotation. The bill was passed by 80 of the 96 senatorial votes. In the House it was reported but had not yet come to a vote when the agencies went into action. The freedom of action which they quite honestly cherish would be greatly lessened if the Logan-Walter bill became law. In a few words it provides that the agencies shall each set up rules governing their dealings with the public, which shall be published, "so that the individual shall not be forced to find out what these rules are by means of a costly proceeding in court," and for the proper appeal of such cases. The provisions of the Logan-Walter bill may be somewhat neglected here for a reason that shall be stated.

WHEN the agencies went into action they went with a bang. They induced Attorney General Frank Murphy to appoint a committee to examine into the subject of administrative law. Walter Gellhorn, instructor in law at Columbia, is director of this committee. Among a few officeholders on it is Solicitor General Robert H. Jackson, regarded by Senator Logan as "the most dangerous man" in the group of New Dealers who favor the grant of independent power to the agencies. This committee has been at work for more than a year on the subject, which had already been well explored, and, at last report, cannot make up its mind on it. During the absence of Senator Logan from the Senate floor, because of illness, Senator Minton of Indiana asked that the bill be reconsidered to give him a chance to inform himself upon it. Senator Barkley, the Democratic floor leader, consented to the reconsideration.

Senator Logan conceded that no time had been lost, for this reconsideration came almost at the end of the 1939 session, first part, when it was improbable that a breathless House would have been able to find time to put the House bill through. But the fact is that the whole face of affairs may have been changed. The administration has now swung into action against the Logan-Walter bill. The Federal Lawyers' Guild is opposing it. The guild numbers many New Deal appointees in its membership. A faction in the American Bar Association, of which Louis

¶ "A FEDERAL *statute gives the Federal Power Commission authority over utility companies which seek to erect dams on navigable waters. . . . If utility companies were permitted to dam streams at will, certain navigable waters would quickly cease to be navigable. But the FPC maintains that it is the sole judge of what is a navigable stream, and that it has the power to forbid the erection of hydraulic works in streams emptying into navigable waters, on the ground that such feeder streams affect the navigability of the main watercourse.*"

G. Caldwell, the expert on radio law, is the real head, maintains that there are technical weaknesses in the Logan-Walter bill and that it is better to drop it entirely and devote all energies to the promotion through Congress of the bill first presented to the American Bar Association in 1936, which did not receive the association's endorsement. This provided for an administrative court of expert judges.

THE net result, in the opinion of congressional experts with whom I have talked, is that it is doubtful if anything will be done in 1940 to correct a condition that is all wrong.

It is admittedly all wrong. It might be said that it is inevitably all wrong. It seems impossible that in the democracy of the United States, founded by men who claimed the right of free speech, it should be possible for a Federal agency to deny free speech to a reputable, loyal, honorable man. If the law governing the operations of the National Labor Relations Board had carried in so many words a prohibition of free speech, it would have aroused many indignant patriots and the Supreme Court would undoubtedly have declared it unconstitutional. There is a clause in the Constitution which guarantees free speech to every man. Henry Ford relied on the Constitution. But the NLRB denied him the right to free speech.

For years he had been publishing *Fordisms,* in which he said what he wanted to say about labor racketeers, the closed shop, business conditions, and the state of the nation. No one had ever attempted to stop him, even if he did step on an occasional toe. Then he got into a dispute with some of his employees and continued to publish his *Fordisms* just as he had been publishing them. No one suggests that he said anything that he had not said many times before, but the NLRB ruled that he couldn't say it, because he was obviously trying to influence the men who worked for him, and that is against the NLRB law. A CIO striker has all the right of free speech he wants to assert, but the employer hardly dares pass the time of day with a foreman.

"I'll not stop," said Henry Ford.

So he went to court to make sure that he has a right to his constitutionally guaranteed free speech.

THE Montgomery Ward & Company was ordered to go through all its records and prepare a statement telling all. M. W. & Co. refused to do so. It would answer any specific inquiry, it said, but to work through all its records would not merely be a tremendously costly experience, but it would interfere with the progress of its affairs. So it is putting up a fight in court. My recollection is that some years ago the Electric Bond and Share Company spent one million dollars, or such an amount, in helping a Federal agency go on a fishing expedition. I have no remote idea how many other companies have been compelled to spend time and money in searching their books to find some facts which can be turned over to an inquisitive agency on which a complaint may be based.

Yet the whole welter of dictatorial despotism grew up in a perfectly natural way.

When the country was young and more or less lawless and growing like a sunflower, many things had to be

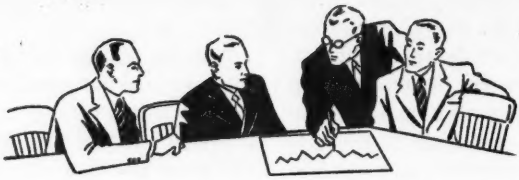
done. They were clearly things which Congress should do. But Congress did not have the time or the special knowledge necessary for the doing. It began the practice of granting quasi legislative - judicial - executive powers to boards and commissions, giving them some money to go on with, and fixing a rude statutory frame within which they were to carry on their tasks. Congress could not go too much into detail in this authorization. It was impossible for Congress to foresee what might come up. It did not know how a commission would set about doing its duty, or in fact what that duty might prove to be. The assumption was that the commissions would keep inside the law and that if they failed to do so there would be a prompt recourse to the courts.

As the country grew, so did the boards and agencies and authorities and commissions. The number of cases multiplied as no green bay tree ever did. In 1937 one Federal department alone settled more than 614,000 cases. All the Federal courts put together only handled a few more than 140,000 cases. It is apparent that if every man who had a disagreement with a Federal agency had taken his troubles to court, the dockets would have been gummed up for the next century or two. It became a practical necessity for each agency to decide its cases for itself. Only now and then did a case get into court, for the judicial procedure is long, puzzling, and expensive. A trade association secretary recently stated that the average cost of litigation with Federal agencies for the members of his association was more than $24,000. Not many business men have $24,000 to spend even when they know they are right.

But the complaints against the despotism of the bureaus have been growing for half a century. It was recognized by business men and industrialists generally that the agencies were forced by the mere weight of their constantly growing business to take action that might at times seem arbitrary. There have been many complaints against the impatience and the carelessness and the godlike ruthlessness of some of the autocrats, but surprisingly few that any of them were dishonest or partial or intentionally unfair. With the philosophic good temper which is a characteristic of the American business man, the one who lost his case dismissed it as hard luck and, if he lost too many, would conclude that something ought to be done about a system that was evidently halt, lame, and blind. His lawyer often could not help him for administrative law is unlike the law he usually encountered.

Only within the last few years has the fact been realized that the agencies are often lawless autocrats, defiant of the statutes, and indifferent to the courts; hence the energy exerted by the Bar Association and backed by the National Association of Manufacturers and thirty-odd other national organizations, and which eventually resulted in the Logan-Walter bill.

But in the opinion of this commentator, based on observation, judgment, and what he hears, the fight has only begun. And if he were a betting man, he would make the agencies a favorite in the books and let the public lay its own price on the Constitution to show.



Monopoly Pricing in Shaping Utility Rate Schedules

Cost studies do not, in the opinion of the author, wholly justify the difference in charges for different classes of service.

By C. EMERY TROXEL

A NUMBER of years have passed since a few intrepid electric company owners or managers began selling electricity for power purposes at reduced and attractive rates. If they had not started this now well-developed practice, some other managers would have. Though those who ventured early in this class of business were sometimes rebuked by their fellows, the "worm has turned" and today public utility managers would probably be condemned by most of their associates if they did not have many classes of service with appropriate rate differences. Meanwhile, a multitude of rate schedules were established, especially in the gas and electric industries, for an astonishing variety of types of uses and customers until the rate structures began to resemble freight rates in complexity and number. This development, so inviting to any company or industry able to reproduce it, has been followed in recent years, for instance, with new classifications of telephone and telegraph service. And yet some persons, one of which I admit is myself, believe that these prevailing characteristics of public utility rate schedules cannot be indisputably supported by cost studies.

PERHAPS readers will yawn on learning that another article has been done on differences in public utility rate schedules. But there seems to be occasion for frequent, sometimes repetitious, consideration of this subject on which there is so much confusion of thought. Strangely enough, for example, authors, including writers of textbooks on public utility economics, have frequently accepted the seemingly irreconcilable conclusions that there is some of "what the traffic will bear" —a synonym for monopoly pricing— in all this rate making and that cost studies justify the differentials of these class rates. Further, it may be argued

by some persons that such rate schedules cannot be based on misbegotten ideas or be discriminatory if they are universally used in the railroad, gas, and electric industries, and if there is a touch of them and perhaps a managerial desire for more of them for telephone and water service. In effect, some of the substance of this article is the judgment of a few persons against the field. It is hoped, nevertheless, that you will peruse the following thoughts of calling a "bald head a bald head" despite camouflages, even if there will be some familiar material on the consideration of the specious nature of the familiar cost and load arguments; even if the forgotten but nevertheless existent monopolistic character of these rate schedules will be emphasized.

EXCLUDING for the moment the cost matters connected with off-peak rates, the joint-cost character of some of the costs may be noted. For allocation of these jointly incurred costs to the several classes of service, many ingenious procedures have been devised. Indeed, so much have some of the notions been defended that the advocates of such cost allocations—arbitrary allocations at best—may sometimes begin to believe in the irrefutable quality of their findings.

But these conclusions about cost of service often seem to depend on the selection and use of arbitrary means of cost allocation. Perhaps one extreme of arbitrariness may be illustrated by the content of a now 6-year old article of M. L. Cooke in which, after observing "that the American people are definitely of the opinion that retail electric rates are excessive," he concluded that customers are told "that their higher rates are primarily due to the high cost of distribution" whereas "there are absolutely no scientific data upon which such costs are based."[1] Further, the Federal Power Commission, in studying the distribution cost of electricity of 22 systems, used the noncoincident peak method (sometimes with modifications) for allocating the expenses in connection with jointly used plant and equipment.[2] There was little more explanation of this choice than the abbreviated references to "considered judgment of the engineers of the commission," the "literature on the subject . . . and conferences with many of those in the utility industry." Other and sometimes similarly approximate bases were used by the FPC to apportion operating expenses. The cost of electricity distribution for these systems, following the commission's calculations, ranged from about 2½ to 30 times as great for residential as for industrial customers, an astonishing variation which may cause one to doubt at least the presence of consistency, if not accuracy, in the study. Or another study of such costs, a study which was published several years ago in the FORTNIGHTLY, was based upon a similar cost-allocation procedure with the result that domestic kilowatt hours were calculated to cost six times as much as industrially used ones.[3]

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[1] "Paying Too Much for Electricity," *The New Republic*. Vol. 73, Dec. 21, 1932, pp. 150-153.

[2] Federal Power Commission, *National Power Survey: Cost of Distribution of Electricity*, 1936, pp. 42-48.

[3] Hudson W. Reed, "Common Fallacies about the 'Average Cost' of Distributing Power," PUBLIC UTILITIES FORTNIGHTLY, Vol. 12, October 26 and November 9, 1933.

No one would doubt that some costs are associated solely or principally with only one type of service. There is no rub here in the cost allocation job. But the interest, depreciation, and operating costs relating to several classes of service cannot always, if ever, be apportioned accurately. When a device such as the noncoincident demand procedure is used, there seems to be no show of either quibbling or pedantry if one asks by what manner of reasoning can it be established that customer responsibility for such costs is thereby explained. The joint nature of some costs and demand forbids the presumption of accuracy from use of, say, the noncoincident demand device. Rather such results ought to be labeled, if they are to be used at all, as estimates of costs according to the implied assumptions. No well-informed accountant in nonutility enterprises is likely to defend staunchly this sort of cost finding, and yet there are persons, including Mr. Cooke, who believe with more hope than wisdom that more accounting control will magically determine the cost of producing and distributing gas, electricity, and other utility services. Without intending to throw salt on a wound, it seems that utility supporters of these cost-finding defenses have something of an unrecognized affinity with the TVA protagonists. Are not the TVA accounting methods concerning electricity cost (the yardstick) roundly criticized because they lead to arbitrary results from a joint-cost problem?

ANOTHER cost argument, probably the most familiar one of all, is the one which runs in terms or wider spreading of fixed costs and is used to justify any business that increases revenue more than cost. Although this notion sometimes is mentioned only in connection with off-peak business, a more commonly supportable use of the idea, it will be considered here first in connection with promotional and all types of business. It has been, perhaps, the commonest basis among the various "cost" ideas, on looking at the historical development of utility rate schedules, upon which new business has been sought and developed. If this conjecture is acceptable, it adds to the evidence that the above-described type of cost studies are wishfully done. If business is obtained on a basis of covering at least variable cost, a sort of by-product accounting basis as it were, it would be simply a chance coincidence that the rates for this business would

¶ "FAILING *in convincement with all other cost arguments, makers and defenders of utility rates rely upon their supposedly irrefutable facts and reasoning about load factors. No one, of course, need question seriously the conclusion that usually customers with 100 per cent load factors may be served more cheaply than customers with, say, 25 per cent load factors. Unless the latter are strictly off-peak customers, or unless their separable costs are much less than those of the other customers, there seems to be nothing amiss in the claim.*"

be justified according to another type of cost study. Furthermore, for the sake of getting hearing on the matter and not to gall you, mention may be made of the seemingly analogous but condemned practice by TVA of selling electricity principally as a by-product.

Other quarrels have been and still may be had over this argument. First, this means of spreading fixed costs is based usually upon the assumption of no change in fixed costs. Thus, the argument is restricted to an existing plant and is not appropriate in circumstances involving the expansion of a plant. But the procedure in reality may be inadequately supported under these conditions, for some new business may develop until more plant is needed. Formulation of rates in this manner ought to take account of the possible needs for expansion. Perhaps failure of managers to consider such expansion may have been covered up in developing utility industries; errors which otherwise would have resulted in losses, by the economies of technological changes. Second, if indeed the argument is narrowly based on use of the existing plant, one may properly ask why there is unused on-peak capacity. Was this excess capacity installed for anticipated new business? If this is true, the new business ought to pay for the increase in fixed costs associated with excess capacity, or otherwise there ought to have been construction of a smaller plant. Finally, since it is argued that an increase in revenue above an increase in cost provides a means of reducing old-customer rates, it seems proper for one to question whether there is realization of the rate reductions on the advent of these promotional rates.

EXPLANATION of rate schedule variation in terms of further spreading of fixed costs usually appears more sensible when it is applied to *strictly* off-peak sales. If, however, the off-peak sales increase until a new and differently located peak is established or until plant enlargement must be undertaken, the troubles will be like the ones listed in the preceding paragraph. Further, only scant use may be made of the idea when it is confined to a strictly off-peak setting, most sales not being solely off peak in character.

What turns out to be nothing more than an offshoot or duplication of the above idea of spreading fixed costs more thinly is the rate-making idea of treating parts of the business, such as electric lighting or gas cooking, as "base" loads. Sometimes this is described as the increment cost method, seemingly a sort of by-product accounting. In their simplest and possibly most common form rates are made with the objective of receiving an increase in revenue in excess of the immediate increase in costs. And these costs include expenditures for plant changes as well as operating expenses; the longer the view that is taken of cost increases, the more significant becomes the cost of plant changes. Having justified new business in this manner, the supporters of the idea sometimes "jump their traces" and assert that such business bears its "proper" share of the joint costs. This would amount sometimes to a backhanded, question-begging defense: It should exist because it does exist.

LET us question further the base-load argument. (Later it will be argued that this "cost" idea is related really to

Price Discrimination for Utilities

"PRICE discrimination is necessary for some utility companies, if they are to earn a fair return. Many persons mistakenly believe that monopolists always make profits: Let the railroads be an example of this lack of observation. Thus, price discrimination may be a means of minimizing deficits as well as maximizing profits, a condition which is likely to prevail when there has been a decrease in demand."

monopolistic pricing in public utility industries; utility managers including railroaders need not be ashamed, angered, or surprised on being told that they are doing some monopoly pricing.) Among the complaints about this method is the absence of evidence whereby some sales represent the base load and others do not. Surely, it is being wishful to make a distinction in chronological terms. It would be ridiculous to assign forever the highest rate to the oldest class of customers, the next highest rate to the next oldest class, and so on until the newest class of buyers receive the lowest rates. Moreover, sales sometimes are comparatively large to customers who may be out of the base-load classification, thereby making the amount of sales a poor measure. Power sales of electricity, for instance, are no longer in their infancy. Indeed, the difficulties attending this sort of reasoning are the same ones that have been observed for joint-cost studies.

In this connection a thought of the New York commission may be approvingly mentioned. When an electric company contended that the increment cost method was best for some types of business, for there were "wide differences of opinion" about other cost apportionments, the commission observed that some residential customer costs ought to be omitted likewise "because they are indefinite and involve allocations as to which there are wide differences of opinion."[4] Remember, too, that with multiple-purpose TVA a form of the increment cost method is apparently being used for electricity accounting and rate making.

UNLESS something about the economies of large-scale production is noted, someone will brand these remarks as incomplete. Not infrequently it is contended by means of what is a variation of the general base-load or increment cost arguments, that technological circumstances permit unit cost reductions with plant enlargement. Consequently, lower rates for the new business but not for the old business are believed to be warranted. While such cost reductions cannot be doubted, we must not forget that these cost re-

[4] *Re* New York State Electric & Gas Corp. (N. Y. 1934) 6 P.U.R.(N.S.)113.

ductions would not have been within reach in the absence of existing customers and sales. There is no reason for believing that the last person to be served should receive the choicest goods. In fact, the old customers—those making up the so-called "base" load—may have served as guinea pigs by using old-type equipment; technical changes are sometimes effected through use of existing equipment. If this is true, and it is a rather common observation, it would be ungrateful if nothing more to give all or the best of the plums to the uninitiated. A lot of special economic reasoning, bearing upon long- and short-run cost curves, might be done, but in deference to those who might tire under such reasoning we can skip this addition to these statements.

Failing in convincement with all other cost arguments, makers and defenders of utility rates rely upon their supposedly irrefutable facts and reasoning about load factors. No one, of course, need question seriously the conclusion that usually customers with 100 per cent load factors may be served more cheaply than customers with, say, 25 per cent load factors. Unless the latter are strictly off-peak customers, or unless their separable costs are much less than those of the other customers, there seems to be nothing amiss in the claim.

BUT there are reasons for questioning the application of the load factor argument. Do public utility rates regularly conform to load factor data? To illustrate that sometimes they do not, the author's favorite case usually is house-heating use of gas. Everyone knows of the tremendous seasonal variation of these sales. According to calculations of annual load factors, the house-heating business is less desirable than cooking sales of gas. Yet cooking rates are commonly higher, usually much higher.

Moreover, the load factors are too often calculated for only a 15-minute period, a day, or occasionally a year. But a 10- or 20-year load factor for industrial customer sales may be much lower than a 30-minute one. During a depression, sales to industrial and commercial customers may have declined more from their prosperity peak than the sales to domestic buyers. Industrial and commercial sales of electricity and gas declined from 25 per cent to 30 per cent between 1929 and 1932, whereas domestic sales of electricity increased. If load factor data are to be used to support public utility pricing, they ought to be in terms of long as well as short periods of time.

A RECAPITULATION of this attack on or appeal for modification of the so-called cost arguments is needed before the next section is reached. Despite criticism of the cost arguments, no attempt has been made to refute the contention that it costs more to serve some customers than it does to serve others. Nor is a case being made for uniform rates. Yet the presence of joint costs prevents precise determination of the cost of serving a class of customers. And still some persons make conjectural allocations of joint costs, even while they have access to the warnings about the accuracy of such work or about the usefulness of the results of their efforts. Spreading of fixed costs, the increment cost method, or similar notions are expedient, short-term rate-making procedures, having perhaps the

business man's and accountant's myopic reliance on cost accounting as the reason for their existence, that are principally put forth to defend or guide the pricing of the product of a single plant. They seem to be best explained in terms of the following statements. Nor can the load factor arguments be unqualifiedly accepted. In attempting a description of rate variations there is apparently a need for other means than cost studies, and in endeavoring to effect a coherent explanation we now turn to another approach.

IN calling a "bald head a bald head," and ignoring deception, there will be an attempt now to show that some if not all of the utility rate variation stems from practices of monopolistic pricing. Many persons have said that public utility rates have been and are being determined according to what the traffic will bear or value of the service. They are not wrong. But most or all of them have presented nothing tangible by which it may be proven that such rate schedules may be unquestionably associated with monopoly pricing. Having uttered one of these phrases, they usually pass on to other and often unrelated explanations of rates. Usually they have not made clear the compatibility of class prices—price discrimination—and profit maximization. In consequence of these errors, no use will be made here of the idea of value of the service and similar "catchy" phrases.

To describe effectively the monopoly basis of price discrimination it is necessary for us to turn to some economic reasoning. Because some readers may not be schooled in the language and the analysis of economists, the description here will be toned down at the expense of preciseness.[5]

Let us note initially that the acme of monopolization would amount to pricing for the largest possible profit, an objective that might lead to a different price for every unit of service. A top-notch monopolist would not sell each unit at a uniform price if it were possible for him to increase revenue and profits by doing otherwise. In part this is simply another way of saying that buyers' demand (the usual economist's, although not a business man's, concept of demand) for goods is not always the same either as to elasticity of demand or with respect to the amount which will be bought at various prices.

THE same notion may be applied to class rates. Perhaps it ought to be said, however, that the number of

[5] Those who want more detail about my thoughts may see my article, "Class Prices for Gas and Electricity," *American Economic Review*, June, 1938.

¶ *" . . . lower rates for the new business but not for the old business are believed to be warranted. While such cost reductions cannot be doubted, we must not forget that these cost reductions would not have been within reach in the absence of existing customers and sales. There is no reason for believing that the last person to be served should receive the choicest goods."*

classes of service (the number of rate schedules) is limited to some extent by such matters as public opinion or difficulties of separating customers into classes. If the demand for all classes of customers were identical, *i.e.*, if each class, for example, would buy the same number of thousands of cubic feet of gas at each of the possible prices (economist's idea of demand), there would be no advantage to the company from different prices. Nor would there be a reason for dissimilar prices for the several sorts of service, if there would be the same proportional change in the amounts (regardless of their size) that each class would purchase at lower and lower prices. (In the terms of the next paragraph, the latter is a condition of identical elasticity of demand.)

Thus, it may be surmised that it is variation in the demand of the classes which accounts for an advantage in rate differences. The variation is the dissimilarity in elasticity of demand, as the economist labels it, of the several customer groups. Elasticity of demand describes, expressing it in the simplest possible way, the change in total revenue which would accompany reductions or increases in price. For instance, demand is said to be inelastic when total revenue from the sales declines as prices are lowered.

The writer believes, for example, that the demand for electricity by industrial power customers is more elastic than the demand for it for residential lighting. How may this condition be explained? The principal reason seems to be the nature and accessibility of the substitutes for these uses of electricity. The industrialist may often use gas, coal, or other sources of power; certainly the competition encountered in making these sales is well known. Or he may be able to build his own electricity generating plant without much additional cost for electricity, whereas the residential-lighting customer has only such alternatives as candles or kerosene lamps. And the residential customer commonly cannot install his own electric plant without incurring notable increases in electricity costs.

For similar reasons it seems likely that large power customers have a more elastic demand for a power company's electricity than small power customers, even though accurate measurement of elasticity of demand may not be possible. Likewise the demand for industrial and house-heating uses of gas seems to be more elastic than it is for cooking uses of gas. And further examples of differences in elasticity of demand, too, might be given for other classes of customers in these and other public utility industries.

A monopolist will charge a higher price to the customers with inelastic demand than to those with elastic demand. Fixing rates in this manner, he will obtain a larger total revenue for the same amount of expenditures than would be secured by charging a uniform rate to all. After some limit has been reached in sales to customers with inelastic demand, it would be more profitable, because of the larger additions to gross revenue, to seek sales at a lower rate in the elastic demand class than to lower rates for the former class. The way of describing and proving all this with economic reasoning will not be undertaken here (I have tried to do it in my aforementioned article) for the sake of time and the fear of losing

Rate Concessions for Elastic Demand

"A MONOPOLIST *will charge a higher price to the customers with inelastic demand than to those with elastic demand. Fixing rates in this manner, he will obtain a larger total revenue for the same amount of expenditures than would be secured by charging a uniform rate to all. After some limit has been reached in sales to customers with inelastic demand, it would be more profitable, because of the larger additions to gross revenue, to seek sales at a lower rate in the elastic demand class than to lower rates for the former class.*"

readers by entering upon a lengthy, possibly boring, explanation.

Such reasons for discriminatory pricing seem to be in accord with rate making for on-peak business under the increment cost method or under the idea of spreading fixed costs more thinly. These methods are designed to get revenue in excess of variable cost or additions to total cost. Believing that rates will be established to get the largest possible amount of revenue above the variable cost, utility men who use these rate-making ideas will be trying to make immediately or in the future such additions to net income. These supposedly special rates apparently add more, or soon will add more, to net revenue, even if they will cover with an existing plant only something more than variable cost, than if rates are lowered to some other classes of customers. Do not forget that reduction of rates to a class of customers with inelastic demand will result in a *reduction* of total revenue! When cost-reducing technological changes with plant enlargement are available, rate adjustments for selling the larger output can also be shown to follow this pattern. And pricing of strictly off-peak business is simply a special case of getting as much revenue as possible above the addition to costs.

PRICE discrimination is necessary for some utility companies, if they are to earn a fair return. Many persons mistakenly believe that monopolists always make profits: Let the railroads be an example of this lack of observation. Thus, price discrimination may be a means of minimizing deficits as well as maximizing profits, a condition which is likely to prevail when there has been a decrease in demand. Or, when an irreducible minimum of plant is necessary before a company

can turn out services, there may be a like use for discriminatory rates. In constructing a railroad, for instance, it is necessary to have some sort of road bed with ties and rails. Yet available business at a uniform rate per ton mile possibly would result in deficits, and as a means of obtaining a return on this minimum of plant some price discrimination may be used. Surely it would not be claimed that some or all of the current price discrimination of financially harried railroads ought to be eliminated unless there is a willingness to experience an increase in railroad abandonments. Long-distance gas pipe lines may be an excellent current example of this rate-making condition concerning a minimum amount of plant; perhaps it is only by use of low industrial or dump rates for natural gas that a fair return may be earned.

SOME readers may be astonished by the claim that monopoly pricing exists where they thought regulation had been established to eliminate these practices. We have already observed the need for price discrimination as a means of deficit minimization or of earning simply a fair return.

Why may discriminatory pricing be used to obtain more than a fair return? Certainly one reason for it is the infrequency of, and in turn the lack of, funds for rate investigations. In part this scarcity of rate regulation, though it is not altogether unfortunate since it leaves something to managerial initiative, is attributable also to the awkward and expensive legal requirements of regulation. But these conclusions about rate investigations may imply knowledge by regulators of the nature and existence of rate discrimination and what to do about such practices.

Because of the statements made in rate cases, which will not be cited here, there are adequate reasons for believing that at least some commissioners would not be certain to recognize rate discrimination if they were to encounter it.

No Statute of Limitations on This Refund

IN 1919 John P. O'Laughlin, a Pittsfield, Mass., restaurateur, suffered a spell of illness which confined him to his home. At his request the local telephone company installed an extension at his bedside to allow him to communicate with his restaurant. In a short while O'Laughlin recovered and returned to work. The special telephone was removed but by some slip of office routine the charge was continued each month on his restaurant telephone bill. Twenty years later the company discovered its mistake and notified O'Laughlin that a check for some $200, plus interest, was being mailed to him. Needless to say, the subscriber was delighted as well as surprised, especially since it came in "dandy-handy" for Christmas shopping.

Will the War Handicap Electric Utilities?

Notwithstanding the threat of increased fuel, wages, and labor costs, the author believes the companies are in a position to protect themselves from gradual price advances and that the industry's outlook is distinctly promising.

By OWEN ELY

DESPITE a sales growth since 1929 that would be the envy of almost any other industry—over 40 per cent gain in kilowatt-hour output—the electric utilities have been unable to reattain their 1929 net earnings level. However, they came within striking distance of it in the last quarter of 1936 and may again approach it in the last quarter of this year. The trend of net income by quarters in 1938-39, based on *Standard Statistics'* index for fifteen large systems, has been as follows:

Year	*First Quarter*	*Second Quarter*	*Third Quarter*	*Fourth Quarter*
1938	102.0	104.0	104.8	113.2
1939	113.4	118.1	121.3*	140.2*
Per Cent Gain	11%	13%	15%	24%

*Estimated.

Standard's estimates for the last two quarters of 1939 may give an exaggerated impression of current earnings gains, because the index is largely based on holding company figures, which, owing to capital leverage, fluctuate more widely than those of the operating companies. While the above figures indicate a gain of about 16 per cent in net income for the calendar year 1939, another estimate based on returns from 175 operating companies indicates an increase of only about 11 per cent.

However, even the latter gain is not a bad showing considering the big handicap imposed by the widespread drought which affected many companies during July-October. Production of power from hydroelectric plants during August dropped 35 per cent in New England, almost one-half in Pennsylvania and Maryland, and for the entire country declined about 14 per cent. The same general condition

prevailed in September, and October was probably worse.

In 1940, assuming normal precipitation, the industry should be better able to "cash in" on its current sales growth, and the continued savings from refunding operations, but there remains the question of increased costs due to war conditions. How serious is this? Does the increase of 15-20 per cent in indexes of speculative commodities since August mean a similar eventual increase in utility costs? Is there any danger that the utilities will have to repeat their experiences during 1914-20 when average commodity prices gained 140 per cent?

INVESTORS seem disturbed over this possibility, for utility stocks failed to participate to any extent in the big "war market" of September. Utilities are currently selling below their mid-August levels, though industrial and rail stocks are substantially higher. The relative unpopularity of utility stocks, following their summer gains due to the TVA settlement, seems due primarily to the "war cost" idea. The eastern "power loop" plan sponsored by the administration is probably not an important market factor as yet, since this scheme has only recently taken any definite form. Moreover, the President's recent press statement indicates that no large new hydro or steam plants are proposed in connection with the grid.

In order to gain a proper perspective for the war problem, it is necessary to assemble the cost data for 1914-20 and compare the present situation with that of the former war period.

Unfortunately, neither the utility industry nor the government has compiled accurate expense figures comparable to those available for the railroads. The Census reports on the industry are compiled only at 5-year intervals and are incomplete. In later years other government agencies, together with the Edison Electric Institute, have begun to compile statistics on an annual basis, but the picture is still rather sketchy. Hence, in studying the record of the industry in the previous war and the inflationary period which followed, it is necessary to rely on such figures as can be assembled.

A COMPILATION of the earnings of 15 utility companies, prepared by the Calvin Bullock organization, yields the following approximate results: In the period 1913-20 the percentage of gross revenues absorbed by expenses and taxes increased from 61 per cent to 74 per cent, while the percentage taken by fixed charges dropped from 16 per cent to 13 per cent. The net result was a decline in net income from 23 per cent of gross to 13 per cent. Over the same period an index of 20 utility stocks dropped from 61 to 39, about in line with the decline in net earnings.

There can be little doubt that the increase in operating expenses was largely due to the skyrocketing of fuel costs. The price of bituminous coal dropped in 1914-15 but advanced sharply in the two years following, declined in 1918-19, and sold at peak levels in 1920, in which year it *averaged* nearly five times the 1914-15 level. The 1918 advance was largely due to the extreme cold wave and the breakdown in transportation; while the 1920 jump seems to have been due to uncontrolled inflation, canceled the following year.

It is very unlikely that the utilities could again suffer from rising fuel costs to the same extent as during the earlier period, for these reasons: Fuel costs now absorb only about 8 cents of the revenue dollar, it is estimated, compared with 16 cents in 1917 and a much higher figure in 1920. This may be due partly to increased use of natural gas —consumption of which gained 715 per cent during 1919-37, compared with 27 per cent for coal—but the main factor is increased efficiency. The industry in 1937 had to burn only 1.4 pounds of coal or equivalent fuel to produce one kilowatt hour, while, in 1919, 3.2 pounds, or over 2¼ times as much fuel, was required.

IT seems unlikely that, with various government agencies and the White House itself so militantly set against run-away prices, coal could again increase to nearly eight times the prewar level as it did in one month of 1920. Many utilities are now better protected by having their own mines or mouth-of-mines plants, while most companies maintain two or three months' fuel supply on hand. In an emergency some companies could shift to oil, and our oil reserves, both above and below ground, are now far larger than in 1917-20. Also the huge government hydro projects now under way could eventually conserve coal within the territories they could service.

Nevertheless some increases in spot coal prices have already occurred, and as fuel contracts expire[1] more utility companies will feel the weight of the increased cost.

The monthly price index for bituminous coal, compiled by the U. S. Bureau of Labor Statistics, advanced only .7 in September to 96.7, but in October gained 1.5 to 98.2.

With 1920 experience in mind, the utilities have already protected themselves to some extent against a rise in fuel prices. According to one utility expert, a detailed study of rate schedules indicates that about 80 per cent of the industry is protected, so far as large industrial power sales are concerned, by "fuel clauses" in their contracts providing for automatic rate increases as fuel costs advance. This estimate seems to be confirmed by replies to a questionnaire sent to leading companies by the writer.

Of course, this is only partial protection. Large commercial sales constitute nearly half our total kilowatt-hour sales but yield only about one-quarter of the revenue. On the other hand, residential power sales amount to

[1] Technically, the utilities cannot legally contract for bituminous coal for more than a month ahead.

¶ "DURING *at least a part of the other war period, labor costs decreased in relation to revenues instead of increasing. But those were years of very rapid growth at a time when the industry had little or no problem of dealing with organized labor. The present situation hardly seems parallel. Interviews with leading utility officials of large companies indicate that they anticipate wage increases to keep pace with any advance in the cost of living.*"

only about one-fifth total kilowatt hours while providing about 36 per cent of the revenues.

THUS the protection afforded by industrial fuel clauses applies to only about 38 per cent of the electric companies' fuel bill (48 per cent of total output multiplied by 80 per cent of the industry). However, some part of "small commercial" power is probably also covered and, in the case of one large company, Consolidated Edison of New York, residential rates are also covered. In some cases rates are protected by recourse to some general price index, such as the U. S. Bureau of Labor Statistics "all-commodity" index. It is probable, therefore, that the industry is protected to the extent of about half its fuel bill against increased coal costs—whereas, during the first World War, "fuel clauses" did not come into general use until about 1918.

But while coal is only about 8 per cent of the revenue dollar, may not the utilities be vulnerable on other items? It is difficult to "break down" the typical utility expense account, but the following table may give a general picture of the disposition of the revenue dollar:

Salaries and wages	22%
Fuel	8
Maintenance	5
Depreciation	11
Other expenses	7
Taxes	16
Fixed charges	12
Dividends and surplus	19
	100%

WHILE the utilities' wage item is a smaller proportion of the sales dollar than for the average industry, nevertheless it is the largest single item in the budget. Labor unions have been making increased demands in recent years, and while the industry has thus far been fairly free of labor troubles, it is nevertheless particularly vulnerable, owing to the necessity of maintaining the service (though this fact affords stronger public support in a controversy). It is difficult to estimate the extent to which the utilities are protected against wage increases. Some contracts with large industrial consumers contain both fuel and wage provisions, or an all-inclusive price index basis.

Unfortunately, the 5-year Census figures giving data on utility expenses for the years 1912 and 1917 do not facilitate any exact comparison of trends during the 1914-20 period. The disposition of the revenue dollar (which included income from investments) was about as follows in the two years:

	1912	*1917*
Fuel	11%	16%
Supplies, etc.	10	10
Salaries and wages	20	18
Taxes	5	6
Interest	17	15
Depreciation	6	5
Other items, and net income	31	30
	100%	100%

DURING at least a part of the other war period, labor costs decreased in relation to revenues instead of increasing. But those were years of very rapid growth at a time when the industry had little or no problem of dealing with organized labor. The present situation hardly seems parallel. Interviews with leading utility officials of large companies indicate that they anticipate wage increases to keep pace with any advance in the cost of living.

However, several executives pointed

Uptrend in Taxes

"TAXES have become a major cost problem of the industry in recent years, the proportion of the revenue dollar allocated to government use having shown a steady increase. However, the Federal government at present is not considering any new utility taxes, and social security taxes will remain unchanged next year. No immediate increase in the 18 per cent corporation tax seems likely. In general, then, the uptrend in taxes seems to be slowing down."

out that utilities now pay average wages well above those prevailing in most industries, which might tend to make their increase in labor cost somewhat smaller than in other industries.

There has been little increase thus far in the cost of living—possibly 2 or 3 per cent—because producers of finished goods have not yet used up their low-cost raw materials, and some items, such as rent, move slowly. But unless commodity prices cancel more of the big gains made early in September, it is difficult to see how we can avoid an increase of 5-10 per cent in the cost of living, which might mean corresponding wage increases.

Since the employee and the stockholder both share about equally in the utility dollar, any increase in wages must come out of the stockholders' pocket, unless efficiency increases with bigger sales, or savings can be made elsewhere. It is the writer's guess that, unless the labor unions become increasingly aggressive and unreasonable in their demands, or there is a period of broad inflation, wages should not become a serious factor. Certainly, wage rates should not increase to anything like the degree that fuel costs advanced in 1914-20.

TAXES have become a major cost problem of the industry in recent years, the proportion of the revenue dollar allocated to government use having shown a steady increase. However, the Federal government at present is not considering any new utility taxes, and social security taxes will remain unchanged next year. No immediate increase in the 18 per cent corporation tax seems likely. In general, then, the uptrend in taxes seems to be slowing down. Consolidated Edison, one of the most heavily taxed utilities, paid out about 21.7 per cent of revenues for taxes in the first nine months of 1939, compared with 21.3

per cent in the same period of 1938.

Nevertheless, some utility executives are apprehensive that they may be further called on to help with the burdens of government cost and the armament program, despite the fact that the industry is already bearing much more than its fair share of the tax burden. As an executive of one of the biggest systems phrased it: "Taxes have been rising for the past number of years and there seems to be nothing to indicate that the trend is not to continue. If this country keeps out of war, I can see no reason for other than a normal increase in taxes. Should we get into the war, heaven help us. Because of our present large national debt, the natural thing would be for the government to impose taxes sufficient, as far as possible, to cover the current cost of war. In any event, I would not expect to see the utilities discriminated against, although they certainly would not be overlooked and would have to pay their full share."

DEPRECIATION (retirements) is also becoming a more important item in the utility budget. In recent years many utilities have increased the allowance for retirements, the proportion of revenues allotted to this item by the industry having increased 26 per cent in the decade ended 1937, with a probable additional increase in the past two years. But despite large property retirements, the average balance sheet reserve increased 43 per cent in the decade mentioned. The trend toward the use of straight-line depreciation accounting methods by state and Federal regulatory commissions has probably been largely responsible for the recent increase, together with more conservative policies of utility officials and investment bankers. It is difficult to state to what extent the effects of the new (1938) accounting rules have yet been felt, since many companies are still in process of adjusting their books, but a substantial part of the readjustment has probably now been made. One expert estimate is that the maximum further increase in depreciation (less any corresponding cut in maintenance) would be about 2 cents out of the revenue dollar.

Of course, the increase in the depreciation allowance (in relation to revenues) does not necessarily penalize a long-term stockholder, for two reasons:

1. The increase in the depreciation charge may be largely a mere reclassification of expense, some items formerly charged to maintenance now being charged to retirements reserve so that the "overall" expense ratio for maintenance and retirements may not change much (it is difficult to analyze this point because not all companies publish maintenance expense).

2. The building up of the balance sheet reserve for retirements helps to stabilize earnings and may represent a "hidden asset."

Since the reserve is normally reinvested in property, it helps to increase earning power; though, on the other hand, it holds down the rate base, encouraging lower rates.

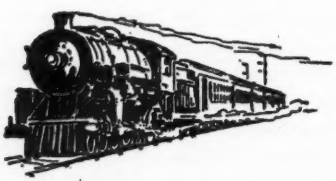
IN recent years the utilities have fortunately been able to reduce fixed charges by large-scale refunding operations. In 1937 interest and sinking-fund charges absorbed only 11 per

cent of the utility dollar compared with 15 per cent in 1932, 13 per cent in 1927, and the same figure in 1922. No figures are available for 1938-39, but the proportion must have been further reduced, probably to 9 or 10 per cent.

While no public financing has been done since the beginning of the war, September 1st, two large private deals have been completed, and the outlook is promising for resumption of public issues. Unless interest rates should advance substantially in 1940, which at this time seems very unlikely, the utilities should be able to complete most of their refunding operations next year. While a reduction in this item does not go very far toward offsetting increases elsewhere in the revenue dollar, nevertheless it is a helpful factor.

Summarizing, the 1940 outlook for the electric utilities seems distinctly promising. With more normal weather conditions, the drought handicap should disappear, and a larger proportion of increased gross could be carried down to net income. This is on the assumption that the present conservative attitude of business, as well as the brakes supplied by Washington, continues to prove effective in retarding any general advance in prices. It is difficult for the utilities to protect themselves adequately against the sharp rise in a single cost factor, such as the big jump in coal costs in 1917-20; but a gradual, broad increase in all costs could be more easily absorbed.

A MOVE is now under way, sponsored by the Edison Electric Institute, to obtain the coöperation of the state commissions toward working out a broader and more effective system of promptly adjusting rates to increased operating costs, through the use of a commodity index or some such device. If this proves successful, the industry will face the future with still greater assurance.



Unavoidable Competition

"THOUGH railroads have been and are being subjected to competition which in many instances is unfair, I do not feel that any existent form of transportation should be destroyed or unduly regulated. We cannot abolish trucks, busses, pipe lines, ships, or barges, but we must recognize the fact that the railroads no longer constitute a monopoly in the field of transportation and are rather only competitive units in a highly competitive field."

—BURTON K. WHEELER,
U. S. Senator from Montana.

Wire and Wireless Communication

THE Federal Communications Commission has decided to recommend and advocate at the next session of Congress, legislation to make possible the merger of the Western Union and Postal Telegraph companies, it was reported on good authority late last month. An official disclosed that the FCC had decided unanimously on this step after James L. Fly, chairman of the commission, revealed that a report would be submitted to the Senate some time in December, but failed to disclose what form the recommendation might take.

More than four years ago, on January 21, 1935, the FCC submitted three recommendations for amendments to the Communications Act of 1934 to the House of Representatives. Adoption of these recommendations would have cleared the way for a merger of the two telegraph companies, but Congress failed to act. Since then the project has languished.

The FCC now has reason to believe that the temper of Congress in this respect has changed, an official said recently, and various government departments, including Labor and Justice, have been coöperating in working out a plan for a merger that would not infringe upon labor rights or the antitrust laws. An attorney transferred from the Department of Justice to the Federal Communications Commission has been coöperating on the project.

MR. Fly said that the report probably would include a model bill and admitted that the commission would make a recommendation as to the advisability of the merger, but he denied that the commission's deliberations had been concluded. He said the report would go to Senator Wheeler, chairman of the Senate Interstate Commerce Commission.

The chairman of the FCC said there had been talk of the possibility of effecting the merger by means of a consent decree in the antitrust case filed by the Department of Justice against the telegraph companies. He asserted, however, that this plan has "very serious limitations." It is the contention of the FCC that a merger would permit a truly "national" service and would place telegraph service in the same position as telephone and postal services. The FCC asserted in its 1935 report:

> Competition in domestic telegraphy tends to be competition for telegraph business in those cities where most of the business originates. It is not a competition in making telegraphy a national service by placing offices in communities which have never had telegraph service. Keener competition would be offered by a consolidated telegraph company to long-distance telephony and the air mail.

It was understood that any new model bill introduced would follow the general lines of the previous recommendation containing authorization for the merger, provision for strict government supervision of telegraph operations, and assuring labor as little injury as possible. The 1935 model bill declared:

> Employees may be retired or dismissed as a direct or indirect result of the consolidation only upon the payment to them of retirement

annuities or dismissal compensation based upon age, service, and earnings, the amount and form of compensation to be determined by the Federal Communications Commission or such other administrative agency as may be designated by the President.

The original bill provided that no changes in rates could be effected without FCC approval and that service to any community could not be reduced without the commission's assent.

One reason for pushing consolidation now was understood to be the commission's belief that the merger would improve the national defense situation. In its previous report the FCC held that "a consolidated system would be better able to keep its plant in condition to stand the strain of the tremendous traffic built up by war conditions than would competing companies whose funds for replacements and betterments were depleted because of competition."

* * * *

ALL forms of utilities will be interested in the new radiotelephone service which the New York Telephone Company is going to make available with the approval of the FCC throughout the Empire state to gas, electric, and traction utilities and eventually, perhaps, to other services which have need for constant supervision over field crews, trouble shooters, or emergency mobile units. The new service will use ultra-high radio frequency and will enable utility maintenance men to engage, from mobile set units on their automobiles and trucks, in 2-way conversation with their service bases. The FCC frequency allocations for this service are all in the 30-megacycle band with 100-watt power for the fixed or central control stations, and 13-watt power for the mobile units.

While the new service will be originally confined to New York, it is certain to be extended to other areas if the experiment proves to be mutually satisfactory to all utility parties concerned. Realizing the inevitable demand for such emergency radiotelephonic communications in and about metropolitan areas, the FCC is inclined to view with favor the handling of such service through the established centralized facilities of the telephone companies, rather than allow separate gas, electric, and other utility concerns to attempt setting up emergency communications services of their own.

For some years municipal police departments have been allowed to use the latter technique, and while it may be necessary so as to insure complete control by the police over their own facilities in the public interest, the system has not been entirely satisfactory from the standpoint of coördinating it with regulatory demands of radio usage in general.

Rates for the new service have been discussed among the New York Telephone Company and public utility companies in the New York city area and are expected to be filed in due form in the near future.

* * * *

IN a test to determine whether sharply reduced prices on television sets will bring in sufficient business to assure quantity production and lower costs, the RCA Manufacturing Company has just completed a two months' campaign in Newburgh, Poughkeepsie, and Middletown, in which more than 100 sets were sold, it was learned recently in New York.

In discussing the campaign, officials of the company emphasized the point that no decision as yet had been reached on whether prices would be reduced. The results of the drive will be thoroughly analyzed and discussed with metropolitan distributors and dealers before any final decision is made. Trade discounts and various other practices have to come under scrutiny before the company reaches any decision on prices, it was said.

Newspapers were used to advertise the sets, although copy carried no prices. The $600 sets were reduced to $395, the $450 sets to $295, and similar reductions were made in the cheaper models. The public showed a particularly good response to the cheaper models, especially around the $200 range.

While the company made no official comment on the test, it was regarded by others in the field as showing that the

public will purchase sets if they are priced at levels considered by consumers to be reasonable. The area covered—Newburgh, Middletown, Poughkeepsie, and surrounding territory—represents about one-thirtieth of the population of the metropolitan district.

The fact that the Newburgh public in two months bought 100 sets, as against sales of only 1,000 in the entire New York area since May, indicated very graphically that prices have been one of the chief factors in the slow sales, according to observers.

Another reason was said to be the quality and quantity of the programs. National Broadcasting Company has been striving to improve the quality of its telecasts and Columbia Broadcasting System is now expected to get under way with programs around February 1st.

Although no assurance of lower prices on television sets has been given yet, the general impression in the trade is that sets will be reduced for 1940. The industry is still conservative about sharp sales gains next year, but expects that volume will be substantially larger than it was this year.

* * * *

NEWSPAPER men both in and out of Washington have become conscious of an interesting change in the press relations technique of the FCC. For some weeks releases have come from the FCC's publicity division which have undertaken to explain in layman's language the various regulatory actions of the commission, which otherwise might be regarded as uninteresting routine, and to evaluate the importance of such actions. In addition, the commission has released several human interest "stories" describing various phases of communications which touch upon the commission's field, such as the policing of the air waves and the significance of international marine distress signals.

The effect to date of this change in the commission's information contact with the press has been an appreciable but somewhat cautious acceptance of the new "copy" by the various dailies, plus some bewilderment on the part of the newspaper men and their editors. This is because heretofore the FCC's own information division had come to be pretty lightly regarded in journalistic circles. Its product, until recently, was principally in the form of routine announcements of commission action stated in mystifyingly technical terms which appeared sporadically and often tardily upon the commission's press release table.

Needless to say, under the pressure of internal discord which prevailed within the FCC until some months ago, newspaper reporters ignored such mediocre journalistic fare and walked right by the commission's press release office and into the office of individual commissioners to obtain the much more sensational news that was then in the making. Consequently the FCC came to be looked upon as a source of political intrigue stories rather than more conservative or educational type of information.

BUT with the coming of Chairman James L. Fly (or, for that matter, several months before his advent) external evidence of internal FCC bickering disappeared. While some of the opposition to the FCC has also disappeared, Chairman Fly has evidently appreciated the fact that public confidence in the new "era of good feeling" which is supposed to exist now within the commission will be restored only when the public has some means of hearing about it. In other words, his efforts toward internal harmony constitute only a part of the job of rehabilitating the FCC. External evidence of it, translated in terms of public appreciation, is needed to complete the task.

This will probably be something of a chore because Washington newspaper correspondents have been spoiled in the past with so much scandalmongering from the FCC that it will be hard to get them into the habit of looking for anything else from that source. However, under the new régime, FCC publicity has made a good start. Patient repetition of this why-the-commission-did-such-and-such technique in FCC releases is bound to have cumulative effect upon the na-

tion's news editors. It is not sensational copy but rather the sort of thing that goes "on the spike" if anything really important in the way of news comes to the editor's desk. But over the long range it will receive surprising acceptance. The newspaper fraternity is not inclined to discourage a reliable source of readable copy once they have become accustomed to look for it.

When the first of these new style FCC press releases appeared, cynical journalists were inclined to look beneath the surface. Very often a political ax waiting to be ground can be found in a government bureau's sudden interest in its press relations (which explains why Social Security Board's releases are always studied by some newspaper men in the light of Administrator McNutt's presidential aspirations). But there is hardly a potential candidacy for any important office lurking in the present FCC membership.

It may well be that the FCC, through this new technique, is attempting to "sell the commission" through the press to the public. If so, it is a commendable promotional venture which is long overdue. The FCC's true importance has always been underestimated by the public, due mostly to the political storms which have overshadowed the commission. The average man on the street does not have a very clear idea of what the FCC is for or what it is supposed to do. Best evidence of this is the number of fan letters which pour into the FCC from radio listeners criticizing or praising program performers on chain radio broadcasts—as if the FCC functioned as a sort of casting agency.

The new style FCC releases are well written in a simple and restrained fashion. The commission's part is not given undue prominence and the ostensible purpose of the release seems to be to impart interesting and constructive information rather than to extol the importance of the commission as such.

Whether this new arrangement (in combination with the gains made by Chairman Fly's peace-at-any-price policy) will effectively disarm the commission's critics in Congress at the next session remains to be seen. Progress in this direction has already been astonishing. Less than a year ago the FCC was faced with ripper legislation sponsored by both the administration and the Republican opposition in Congress (in addition to several pending resolutions to investigate it). Today, Washington observers give the commission a good chance to get by the next session without any more damage than possibly a niggardly appropriation. And if it survives the next session unmolested, the FCC, as presently constituted, will probably be here to stay for a long while. Meantime, it is obviously making an intelligent effort to build up a "good press," whereas heretofore it has suffered from a notoriously bad one.

* * * *

Dismissal of St. Paul metropolitan area telephone rate proceedings now before the Minnesota Railroad and Warehouse Commission was asked by the city of St. Paul on December 2nd. The action was authorized by the city council, following an outline of the case by Louis P. Sheahan, first assistant corporation counsel.

The current proceedings were instituted by the commission after its May 2nd "compromise" rate order. In this order, 25 per cent reductions for telephone subscribers, previously upheld by the Ramsey County District Court and the state supreme court, were reduced to an average of about 12 per cent.

The commission's new proceedings were ordered "to the end that if any such (May 2nd) rates be found unreasonable, reasonable rates may be prescribed." Hearings in these proceedings were held September 11th, 29th, and 30th, over the objections of the city government. The next hearing was set for December 4th.

Judge Gustavus Loevinger of Ramsey County District Court set aside the May 2nd order November 14th. Then the Tri-State Telephone & Telegraph Company formally asked the commission to sanction the rate schedule set up in the May 2nd order.

Financial News and Comment

By OWEN ELY

Roosevelt Reassures the Utilities

THE President's press statement December 1st proved highly reassuring to the utility industry, which had feared an administration "drive" against eastern utilities under the plea of national defense. The President indicated that current capacity is adequate to meet present needs and that there is no emergency with respect to power production. In event of the United States becoming involved in war, he said he supposed there would have to be a number of steam stand-by stations linking public and private power sources throughout the nation. But he added there was no expectation of this country becoming involved in the war.

The President's statement confirmed reports of recent months regarding administration plans for a "grid" or "loop" to complete the tying in of major eastern power systems together with the TVA. However, it disposed of the idea that the government would completely finance the undertaking and thereby obtain a voice in the policies of the private utilities. The President indicated that the utilities would be invited to coöperate with the government plans, carry out the interconnection themselves, and do the necessary financing. However, should they be unable to raise money privately, he suggested that the RFC might loan them the necessary funds.

Previous estimates of the cost of a "grid" system have run from $600,000,000 to as high as $5,000,000,000, but the President did not mention any cost figures. He did, however, indicate that no large hydro or steam plants are considered necessary at present. This was significant in view of recent reports that TVA power is beginning to suffer from drought effects, raising the question of Federal construction of stand-by steam plants.

THE President is reported to have said that "an awful lot of perfect rot" had been written about government power plants with deliberate misrepresentation of facts in an effort to discredit the "human engineering programs" in watersheds such as the Tennessee valley. The current misunderstanding, he explained, had its origin in a bill passed in June, 1938, authorizing the establishment of eight or nine regional planning authorities to devise and administer reclamation, conservation, and related programs for as many watersheds over the nation. It was the general thought that if the program went well in the Tennessee valley, it could be extended to other areas throughout the country. Development of water power in connection with reclamation and conservation projects was never more than 10 or 15 per cent of the undertaking in any watershed, he asserted.

He also indicated that proposed development of water-power resources in the St. Lawrence valley has no connection with the watershed programs in this country, but was concerned only with future power demands in Canada and the United States.

Because of the current lack of interest in stocks, the President's statements had little effect on the utilities, although the Dow-Jones average of 15 utility stocks advanced moderately. Despite the President's statements, *The Wall Street Journal's* Washington correspondent stated:

> A determined group of high New Deal

officials will continue their studies and support of a national, government-financed, superpower transmission loop around the nation's industrial area east of the Mississippi river. Such a loop or so-called grid system would necessarily involve, they believe, some Federal steam plants for stand-by generation purposes. . . . It was learned here . . ., furthermore, that the Power Policy Committee had not yet presented the details of its present plans to the President at the time of his regular . . . (Dec. 1st) press conference. . . . It has been unofficially estimated that a simple linking together of private utility systems through their own transmission lines in strategic areas could be accomplished through a minimum expenditure of $50,000,000. Some companies already have indicated their willingness to proceed with such a program provided, of course, that the new outlays are included in their rate bases. On the other hand, one superpower plan that has been given serious consideration by the committee would entail the expenditure of about $500,000,000 in Federal funds for transmission lines and large additional sums for its complete development.

Consumers Power "Comedy of Errors"

RECENT financing plans of Consumers Power Company accidentally stirred up a hornet's nest of discussion, which was characterized by considerable misunderstanding. News commentators hailed the controversy as another sign of impending battle between the administration and the utilities, although President Roosevelt's views, as recently given to the press, seemed far more moderate than those of his lieutenants. (For details of the incident, see p. 823.)

Otis & Co., Cleveland bankers (apparently acting with several other midwest companies, including seven Michigan investment firms) asked the SEC for a chance to bid on the bonds. Incidentally, they said they would be willing to offer more than the $28.25 per share at which the stock was to be bought by Commonwealth. (The stock earned about $3.20 per share last year, probably more this year.) But Otis & Co. were wrong in assuming that Consumers Power could offer the stock for public purchase, since it is a wholly owned subsidiary and, as Mr. Willkie has pointed out, the price to be paid by the parent company is a mere matter of bookkeeping.

However, at the SEC hearings former administration Senator Robert J. Bulkley, representing Otis & Co., requested an opportunity to question all witnesses and to establish Otis & Co.'s rights to bid on both bonds and stock. Subsequently, Mr. Willkie agreed to permit local firms to participate in the bond underwriting, and it was generally expected that this would terminate what seemed at the time to be a veritable "comedy of errors."

Big Plans for New Financing

AFTER a lapse of three months or more, public offerings of utility securities were resumed November 28th, when Halsey Stuart & Co. successfully floated $52,500,000 Public Service Company of Colorado bonds and debentures. The $40,000,000 first 3½s of 1964 and $12,500,000 debenture 4s of 1949 were both offered at 102, going to premiums. Institutional investors took the greater portion of the bonds, while a widely scattered demand for the debentures was reported from commercial banks. The issue was especially popular in Pennsylvania, due to the 5-mill refund feature.

Another large hold-over offering, $38,000,000 Public Service of Indiana first mortgage bonds due 1969 and $10,000,000 serial debentures due 1940-49, were offered December 7th.

Halsey Stuart is reported planning to offer its third large block of securities, $45,000,000 Northern Indiana Public Service bonds, around December 14th; $6,000,000 serial notes will also be placed privately, without registration.

The $42,225,000 Jersey Central Power & Light first mortgage bonds and serial notes, originally scheduled ahead of the Colorado financing were postponed owing to SEC delay in ruling on the company's status under the Holding Company Act. The company made application over two years ago for exemption and hearings were completed in November, but the re-

port of the SEC examiner has been delayed.

Pennsylvania Water & Power Company of Baltimore on November 30th registered $10,900,000 refunding bonds due 1964; the underwriting group is headed by White, Weld & Co.

Shawinigan Water & Power Co. has applied to the Provincial Electricity Board of Quebec for authority to issue publicly $6,000,000 of 3½ per cent 7-year convertible secured notes, payable in Canadian funds. The notes will be convertible into common stock at $25 a share during the first two years and $30 a share during the second two years.

SOUTHWESTERN Light & Power on November 28th filed a declaration covering the proposed issue and sale of $6,750,000 first 3¾s due 1968, for refunding purposes. The company expects to sell the bonds to a group headed by Harris, Hall & Co.

Central Maine Power Company has filed with the SEC $1,250,000 first 4s due 1964 and 5,000 shares of common stock. The bonds will be sold to the Equitable Life Assurance Society, and the stock to New England Public Service, the parent company.

Wisconsin Michigan Power Company proposes to offer to stockholders and the public $4,000,000 6 per cent preferred stock.

Subject to SEC and court approval, Mountain States Power Company now plans to sell privately $8,000,000 new first mortgage bonds, to facilitate reorganization.

American Gas and Electric Company is planning to issue about $65,000,000 new debentures and preferred stocks for refunding purposes. The company has outstanding 355,623 shares of $6 preferred stock and $30,000,000 of 5 per cent debentures. The preferred stock is callable at $110 a share and the debentures at $106.

The Consumers Power financing—$28,594,000 first 3¼s, to be offered by a Morgan Stanley-Bonbright group if the SEC approves—is described elsewhere.

The $65,000,000 refinancing contemplated by Philadelphia Company probably will not reach the market until after the turn of the year.

Now that the ice has been broken, a number of important systems are reported at work on refunding programs which in the aggregate amount to over three-quarters of a billion dollars. These systems include Electric Bond and Share, Commonwealth & Southern, North American, Standard Gas and Electric, and American Gas and Electric.

Associated Gas Seeks RFC Loan

THE Associated Gas & Electric system, which since the virtual retirement of Howard Hopson has been trying to "play ball" with the administration and has been active recently in framing integration plans, is having some difficulty over an RFC ruling. While it is planned to scrap the top unit, Associated Gas & Electric Company, leaving AG&E Corporation as principal holding company, the recent SEC ruling barring payment of unearned interest or dividends by holding companies is viewed as a possible threat to the solvency of the Company, which weathered many storms during the Hopson régime. The Company's principal source of income with which to pay the interest on its bonds is the dividends received from the Corporation. The commission has now ruled that dividends cannot be paid unless it is notified twenty days in advance. While the SEC granted the Corporation permission to pay December 1st interest on its own debentures, it indicated that the whole subject of relations between the two companies would continue under review.

The system also needs funds with which to meet pending system maturities, pay the balance of back taxes (on which it recently reached an agreement with the Treasury Department), and obtain funds for new construction. Hence the NY PA NJ Utilities Company has asked SEC approval of a $26,500,000 collateral loan from the RFC. If this loan is granted, it will be the first large RFC loan of this character, and it is reported that the RFC

has set up stringent conditions. Of the total amount $5,780,000 would be used for tax settlement; $6,053,000 to take care of the 8 per cent bonds due March 15th, next year; and about $12,000,000 for new construction. The company has offered collateral with a market value of 156 per cent of the amount of the loan.

Traction Unification near Success

NEW York city's traction unification plan has been declared operative so far as the Interborough and Manhattan companies are concerned, deposits of securities having reached the necessary percentages set by the city — ranging from two-thirds to 76 per cent. The B.-M. T. plan has lagged, however, deposits (as last reported, November 30th) ranging from 48 per cent for underlying bonds to 75 per cent for B.-M. T. issues, compared with a uniform requirement of 90 per cent. Mayor La Guardia has warned B.-M. T. security holders who have withheld deposits that they will be disappointed in any effort to obtain better terms. Under the present agreement, deposits must be made by the end of the year. Following is a recapitulation of prices offered by the city (in cash or 3 per cent bonds) for leading securities, compared with recent prices:

	City's Offer	*Recent Price*
B.-M. T. Bonds*	$95	$81
" Pfd. Stock.	65	48
" Com. Stock	19–24**	14
I.R.T. Ref. 5s	82½†	75
" 7% Notes	79⅛†	73
" 6% Notes	35	32
" Common Stock ...	3	4
Manhattan Cons. 4s	82½†	78
" Second 4s	50	42
" Gtd. Stock ...	35	28
" Mod. Gtd. Stock	19	15

*Some affiliated company bonds receive less.

**Estimated, depending on disposition of trolley lines, etc.

†Plus interest adjustment.

The city has apparently decided not to press its efforts to obtain condemnation and removal of the Second and Ninth avenue "Els," until completion of the Interborough plan.

Dow-Jones Earnings Estimate

THE *Wall Street Journal's* compilation of quarterly net income totals for principal electric and gas systems, with estimates for the third and fourth quarters of 1939, are as follows:

Quarter	*First*	*Second*	*Third*	*Fourth*	*Year*
1935	$112	$92	$94	$119	$417
1936	124	104	107	130	465
1937	139	118	105	123	485
1938	127	102	101	126	456
1939	139	118	111	132-138	500-510

Standard Statistics' earnings index, reflected in the chart on page 822, includes telephone company earnings and shows a higher rate of gain for the third and fourth quarters than the Dow-Jones estimates.

The relatively small gain for the last quarter, as estimated by Dow-Jones, is due to continued drought effects, which, in their opinion, almost outweigh the record-high output in recent weeks. During October and November power output averaged about 13 per cent above last year, despite the fact that a year ago a spurt in industrial activity was also under way.

SEC Checks Payment of "Scrip" Dividends

THE SEC has adopted a rule prohibiting the payment of principal or interest on any form of indebtedness which is, in effect, the payment of a dividend declared out of capital or unearned surplus, without regard to when the dividend was declared, unless such payment is approved by the commission. The rule will affect any company which in the past has declared a dividend out of capital or unearned surplus and has then issued a note or other evidence of indebtedness in lieu of cash payment of the dividend. Under the rule the approval of the commission is required before any payment of interest or principal can be made on such indebtedness.

Corporate News

PUBLIC Service Corporation of New Jersey has resumed its old position among the leaders as regards early publication of monthly earnings. For the twelve months ended October 31st, the company earned $2.94 per share on the common stock, compared with $2.27 in the previous year, a gain of nearly 30 per cent. For the month of October, however, the gain in net income was small.

Commonwealth & Southern's October report showed earnings of 12 cents per share for the 12-month period, compared with 4 cents in the corresponding period of last year. The gain in net income was about 27 per cent.

Engineers Public Service Company for the same period reported $1.53 per share compared with $1.09 last year (on a revised basis), an increase of about 40 per cent.

The so-called test case for the interpretation of § 11, that of American Gas and Electric Company, has finally been set for hearing on January 29th, some four months later than originally expected. The hearings will be at Washington before Examiner Richard Townsend. The SEC has strengthened its position by serving notice that proceedings will be under § 11 (b) instead of § 11 (e). Under the former section the commission has full authority to lay down a new plan, if desired, while under the latter it could merely accept or reject the company's voluntary plan. Section 11 (b) is being evoked for the first time, except in the case of Utilities Power & Light Company, a "bankrupt" concern, which had applied for reorganization under § 11 (f) of the Act.

Kansas City Public Service Company has completed its recapitalization plan, and holders of each deposited bond may now obtain $336.67 cash and 10 shares of $3.50 preferred stock. An RFC loan, secured by the old bonds as collateral, will be used to modernize equipment.

North American Company, in order to be in a more flexible position with regard to the distribution of its holdings in subsidiaries to its stockholders, announced recently that a distribution of 3,900 shares of common stock of Washington Railway & Electric Company would be made to holders of common stock of North American on a pro rata basis. The common stock of Washington Railway & Electric, one of North American's most profitable subsidiaries, is selling around $660 a share. North American also has important holdings of Pacific Gas and Electric and Detroit Edison, although these are not considered system affiliates.

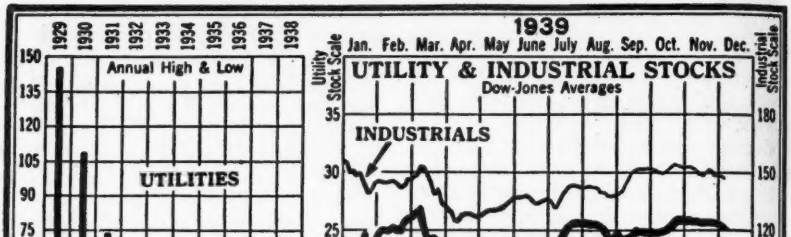
The invitation extended to Leo T. Crowley, chairman of the Federal Deposit Insurance Corporation, to become chairman of Standard Gas and Electric Company, is assumed to have some significance in connection with the difficult integration problems faced by the system. *The New York Times* states:

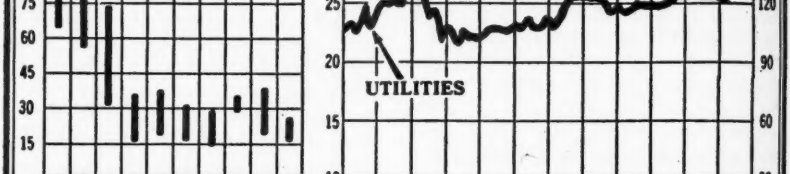
> The selection of Mr. Crowley as head of the system would be a complete surprise to the power and light industry, and it would mark the first time that any major utility system had chosen a New Dealer for its chief executive. Since his appointment by President Roosevelt in February, 1934, as board chairman of the FDIC, Mr. Crowley has distinguished himself as an advocate of sound banking practices and is regarded as a stickler for conservative banking.

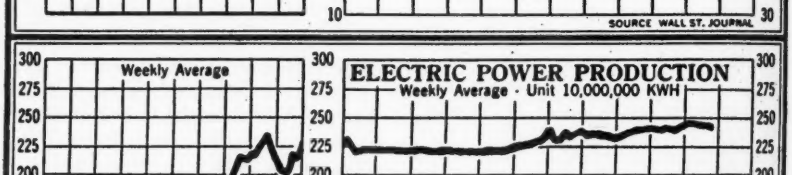
Wisconsin Public Service Corporation is clearing up arrears on its preferred stock and expects to restore dividends on its common stock, all of which is owned by Standard Gas.

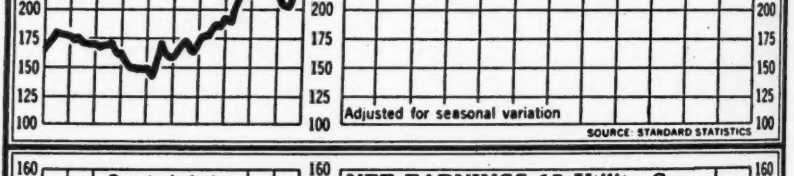
The state of Ohio, through Attorney General Thomas J. Herbert and the public utilities commission, has filed with the SEC a petition requesting that a plan of integration of Columbia Gas & Electric Corporation, awaiting decision by the SEC, be denied.

Application by the Potomac Edison Company, a direct subsidiary of the West Penn Electric Company, to be exempted as a holding company under the Holding Company Act was denied recently.


1939
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938
Annual High & Low
UTILITIES
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
UTILITY & INDUSTRIAL STOCKS
Dow-Jones Averages
Utility Stock Scale
Industrial Stock Scale
INDUSTRIALS
UTILITIES
SOURCE WALL ST. JOURNAL


Weekly Average
ELECTRIC POWER PRODUCTION
Weekly Average · Unit 10,000,000 KWH
Adjusted for seasonal variation
SOURCE: STANDARD STATISTICS


Quarterly Index
NET EARNINGS 15 Utility Cos.
Quarterly
Adjusted for seasonal variation
* Preliminary
SOURCE: STANDARD STATISTICS


Monthly Average
1929 1930 1931 1932 1933 1934 1935 1936 1937 1938
To 249
UTILITY FINANCING
Millions of Dollars
REFUNDING
NEW CAPITAL
Jan. Feb. Mar. Apr. May June July Aug. Sep. Oct. Nov. Dec.
1939
SOURCE: FINANCIAL CHRONICLE

What Others Think

November Fireworks on the Utility *Versus* New Deal Front

IN more peaceful times the fifth of November is celebrated throughout England with fireworks and bonfires dedicated to the memory of Guy Fawkes and the foiling of his "treason, gunpowder, and plot" against good King James. Now that our English cousins are engaged in a more serious kind of pyrotechnic display, a disinterested observer in the United States might have wondered if some zealous New Dealers had not appropriated this quaint British tradition, directed it against utilities, and spread it over the better part of the entire month of November.

At any rate, accusations against private utility enterprise and speeches made during that month by TVA's Lilienthal, Federal Works Administrator Carmody, and U. S. Senator Norris came pretty close to a suggestion of conspiracy if not actual treason and gunpowder. There was a bold reply to this barrage from the outstanding utility spokesman, Wendell L. Willkie, and his associate Thomas W. Martin, president of the Alabama Power Company. Representative Andrew J. May of Kentucky, chairman of the House Military Affairs Committee, also spoke up in defense of the private power industry.

MR Lilienthal opened up the New Deal offensive in an address at Lafayette, Ala., on November 18th, when he sharply criticized the Commonwealth & Southern Corporation subsidiaries in the South for failure to build rural power lines in that territory. He was speaking at the time at the energization celebration of the Tallapoosa River Electric Membership Corporation, an REA co-op which buys power from the city of Lafayette.

He said that if southern farms are to be electrified, farm people must do the job themselves and overcome vigorous power company opposition to their efforts. He cited in particular the record of the Alabama Power Company in support of his contention that the farmers could not depend upon the private industry to get service to them. He observed that in 1923 this company launched a program of rural electrification and that ten years later the state still had less than 5 per cent of Alabama's 250,000 farms electrified. Yet he charged the utility with hampering development and farmer power coöperatives which came after that date.

He made this statement:

> Obstructive lawsuits, the spreading of false reports, and the building of what Tennessee farmers aptly named "spite lines" became accepted practice of the companies. When the farmers organized their own coöperatives . . . to go after the electric service they had so long desired, the Commonwealth & Southern companies in Alabama, Georgia, and Tennessee said, in effect, "we have not provided you with widespread rural electrification; we will not let you achieve it for yourselves." . . .
>
> Alabama farmers got very little electricity to help them carry on their work and increase their income between 1923 and 1933. But it was not because the Alabama Power Company or the other private power companies in the region were in a difficult financial situation. The profits of the companies were large, and substantial surpluses were created every year. In 1928, for example, the Alabama Power Company paid common stock dividends and in addition set aside a surplus of $3,500,000; in 1929 after dividends there was a surplus of almost $4,500,000.

Mr. Lilienthal ventured the hope that the Alabama Power Company would end its "dog-in-the-manger policy" of fighting farmer coöperatives and, in conclusion, said to the coöperative members:

You have had a hard fight. But you will find you have many friends and supporters, too, farmers, business men, industrialists, workers—everyone who comes to see the importance of widespread electrification in the building of a stronger, more prosperous South. I look forward hopefully to a change of policy so the Alabama Power Company will also be found in these ranks, along with other utility companies. On behalf of the Authority, I want to extend to you now any help that TVA may be able to give as a result of our experience and research in the past five years.

In these troubled times our greatest need is to *work together,* townspeople, farmers, the respective branches of government, electric membership organizations, and power companies. Coöperation, not "spite" lines and all they imply, is the keynote of these days. We must all try to find a common basis for understanding, so that all may march forward together toward the objectives of a more prosperous state, region, and nation.

THE first reaction to Mr. Lilienthal's broadside came from the president of the Alabama Power Company, Thomas W. Martin, who declared that his organization's "national record for building rural lines" had apparently escaped the TVA members' attention because the "program was well developed before Mr. Lilienthal knew anything at all about the power business." He recalled that beginning in 1923 the Alabama Power Company had launched a program of rural electrification which resulted in the awarding of a medal for the greatest achievement in this respect of any private utility in the United States. More than 7,000 miles of rural lines costing approximately $10,000,000 had thus been built to serve more than 36,000 customers—all without contribution of a single dollar by the Federal government, as is the case with the activity of the REA and TVA. Mr. Martin added:

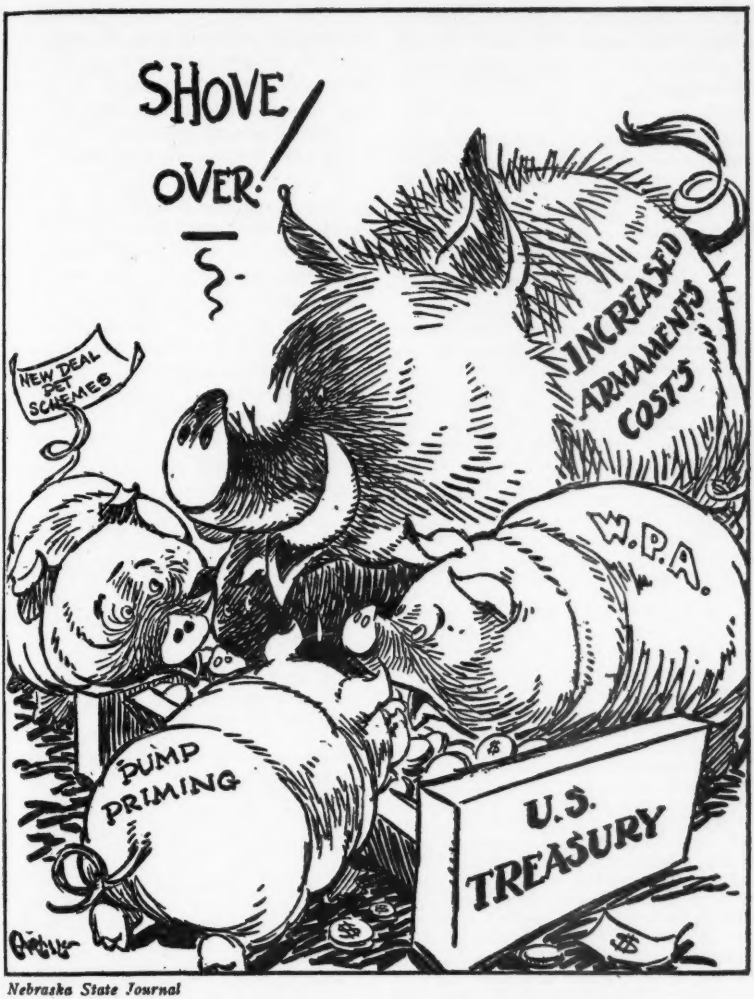
It is apparent that Mr. Lilienthal is continuing the campaign of defamation of utilities which has rendered it impossible for utilities in the area of TVA to refinance or to raise new money for construction. If Mr. Lilienthal and others in similar positions would cease their unfair and untrue attacks upon these companies, the companies could spend additional millions of dollars in putting men back to work, and make it unnecessary for the government to spend millions of dollars which it is spending in developing useless Federal power projects, thus increasing the national debt to a point which is jeopardizing the national economy.

In our appeal to agencies of the government for a rational solution of the REA problem, we have frequently pointed out that the actions and policies of government agents do not jibe with the expression of the President in a letter directed to Senator Byrnes on July 21, 1939, in which he stated that the suggested appropriations were to be used to serve "rural families not now receiving electric service nor likely to receive such service in the near future." The course pursued in Alabama by REA has been inconsistent with the President's public statement.

On November 19th a statement was released by Mr. Willkie, president of the Commonwealth & Southern Corporation, expressing surprise that Mr. Lilienthal was dissatisfied over the rural electrification situation in the vicinity of Lafayette, Ala., which is located over 100 miles south of the area of TVA operations. Mr. Willkie said he was surprised because Mr. Lilienthal had not, prior to his criticism of the situation, shown any particular interest in it nor had he endeavored to discuss it with any officials of the Alabama Power Company, or of the Commonwealth & Southern system. His statement concluded:

Commonwealth & Southern companies are spending millions annually in building rural lines. We are as anxious as any Federal officials to spread the benefits of electricity to the farmers in the territory in which we operate. In fact, the occasion for my presence in Alabama, where I read Mr. Lilienthal's speech, is for the very purpose of working with Alabama Power Company on its projects construction program for 1940, which includes approximately $1,000,000 for additional rural line construction. Such heavy construction programs are dependent upon the ability to finance them. We can only finance them over a period of time by the raising of money from investors. Investors will not put their money in a business which is subject to constant attack by important public officials. Once more we pray for peace. Surely men of good will can work out these problems.

ON the following day at the ceremonies beginning the construction of the Pinopolis power house of the



Nebraska State Journal

NEW BOARDER AT THE PUBLIC TROUGH

Santee-Cooper project in South Carolina, Federal Works Administrator John M. Carmody praised the courage and perseverance of those who had promoted the work. He recalled that over one hundred and fifty-three years ago Governor Moultrie of South Carolina had called on General George Washington for advice and help in putting through the original Santee-Cooper canal. He obtained that help and advice, thereby setting a pattern of state and Federal coöperation in the development of local projects which yield national benefits.

He said that the Santee-Cooper project was destined to play an important part in the "internal fortification" of the American democracy by making avail-

able cheap and plentiful power, thereby promoting local industry and "grass roots" prosperity. And thereupon Mr. Carmody jumped on the private utility industry:

> This fight to protect your interests in the Santee-Cooper project is not going to be any lollipop affair. We might as well face that fact. The power business is no namby-pamby business. Private utilities are tough fighters—and I know that from personal experience. They fought PWA from one edge of the country to the other. They fought your good neighbor, the TVA, for six long years. They fought the Santee-Cooper for years in the courts and let's not forget that they are still fighting Santee-Cooper. That is why I say you must be on guard to protect the future's public interest in this enterprise. Everyone in South Carolina who wants to see this undertaking succeed is going to be engaged in this fight in one way or another. It will be brought to you in every shape and form—in the name of the wild birds and the hardwood trees; in the name of conservation, states' rights, and constitutional law. But do not be deceived. The central purpose is to deprive South Carolina of the benefits of cheap power.
>
> So you of South Carolina must forever keep in mind that every dollar of added cost in this project must be reflected in the price you later will pay for the power from Santee-Cooper. Those who oppose low electric rates—the very thing that will make a success of this job—will try to add every dollar they can to your costs. But if you remember that each penny saved in the cost of the work will come back to you many times in low rates, I am sure you will not be misled by arguments that excessive costs simply come out of a generous national treasury. The electric users of South Carolina ultimately will pay for these costs themselves. It is obvious, then, that prices for land, and economic building costs, are to the benefit of every consumer of electricity in this state. Unnecessary costs, from whatever direction, will help only the private utilities. These utilities believe they will be in competition with this public project. They don't want to see your state authority sell cheap power. That's the heart of it.

Mr. Carmody concluded his address with a discussion of the specific benefits which he thought would accrue from the Santee-Cooper project.

It was this attack of Mr. Carmody's that drew the fire of Representative May of Kentucky, who said that the Federal Works Administrator had "strangely omitted from the list of opponents of this fantastic power scheme the millions of American coal miners and other workers now dependent upon a dwindling and stranded coal and railroad industry for their bread."

He said further that Mr. Carmody might also have pointed to the "thousands of burdened and distressed taxpayers of the states of Tennessee, Alabama, and Georgia who are now working desperately for some plan to present to the next session of Congress by which can be saved scores of taxing districts and counties along the Tennessee river that have been practically destroyed financially by the TVA."

Getting around to the attack on utilities, Representative May is quoted as follows:

> Mr. Carmody's blast against private enterprise in the utility industry coming on the Monday after a strangely similar attack on the same industry by David E. Lilienthal, TVA power director, on Saturday sounds like a renewal of the socialist warfare on this industry. Without doubt it is the opening gun of a propaganda barrage to pave the way for the real attack: promotion of the proposed National Power Policy Committee grid system.
>
> Under the shabby disguise of conservation of natural resources—to throw coal miners out of their jobs and substitute water power—and of national defense, the scheme would accomplish by indirection what Congress would never permit on a straight open-and-shut issue of private enterprise *versus* political ownership.
>
> To hide behind the Stars and Stripes as a disguise to accomplish a wholly un-American objective is an unspeakable travesty on the democracy to which these Leftists give such loud lip service. Those who rant that projects like Santee-Cooper are designed to "make democracy work" depend on the short memory of the public. Only by defeat of the democratic processes they now pretend to defend were such projects created as Santee-Cooper, Grand Coulee, Bonneville, and the Nebraska TVA. The honest democratic process of a clear vote by the people's representatives in Congress was short circuited by means of executive orders in star chamber by the Public Works Administrator. To attempt to hoodwink the public by disguising their socialistic objectives by the American flag and by the plea of conservation is a further cynical transgression by public officials

against the democratic processes of this nation.

Carmody charges that "certain interests are adept in hiding their attacks on public developments behind a smoke screen of philanthropy" and at the same time he hides behind national defense, now popular with the people as a smoke screen for the Federal government's political electric power scheme to destroy fixed investments, coal miners' jobs, and taxable values, the identical outrage recently accomplished by TVA and PWA in the states of Tennessee, Alabama, and Georgia.

The Kentucky Representative charged that the Santee-Cooper project, which was launched by the PWA "contemporary with the Nebraska PWA fiascos," should be made the subject for a searching congressional investigation. He added:

> This Santee-Cooper project will have an installed capacity of 132,000 kilowatts. It will cost, PWA wistfully hopes, $40,000,000—actually nearer $50,000,000 or more. For $10,000,000 the finest and most efficient steam plant in the country producing electricity at eight-tenths of a pound of coal per kilowatt hour could have been constructed. Such a steam plant would not drown out and remove from the tax rolls 250 square miles of South Carolina lands, nor subject the enterprise to the uncertainties of drouth and water supply.
>
> Such a steam plant would have preserved the finest primeval stand of hardwood timber on the eastern seaboard, estimated to contain between two and three hundred million board feet. Such a plant would not, as Jay N. Darling, president of the National Wildlife Association, has pointed out as to Santee-Cooper, "turn 500 square miles of the most perfect and prolific spawning grounds of aquatic food species into a barren waste as unproductive as the Kansas dust bowl." Such a plant would, moreover, provide 300,000 bread winners, employed in the mining and handling of coal, each with one day's work annually.

Representative May concluded that it was a challenge to the government in control of his own political party to stop its punitive campaign against private investment in private property and turn again to constructive statesmanship.

A few days later, on November 25th, Senator Norris of Nebraska, veteran foe of the private power industry, again attacked the Commonwealth & Southern system, this time on the grounds that it was trying to compel one of its own subsidiaries, the Consumers Power Company of Michigan, to issue common stock to its parent at less than a fair price. According to the Nebraska Senator, the Consumers Power Company desires to borrow money to refinance its business and to that end has decided to issue additional stock in the amount of 125,000 shares. The Commonwealth & Southern Corporation has agreed to buy these shares at $28.25 per share.

He charged that investors and bankers generally have had no opportunity to bid and that, as a result, the parent company is resorting to "one of the old tricks" of holding companies to milk their subsidiaries.

Senator Norris referred to an alleged offer by a Cleveland financial house to buy Consumers Power Company stock at more than $28.25 a share, and also to guarantee an attractive bid for a proposed issue of $28,594,000 of the company's first mortgage 3¼ per cent bonds, series of 1939, due in 1969. He concluded:

> . . . But they were not permitted to make this purchase, or to make any bid for the securities. Thus, it happens again that the holding company is robbing its own subsidiaries, in order to enrich itself. It seems to me to be a clear violation of the real spirit of the Holding Company Act. I am wondering what the Securities and Exchange Commission is going to do about it. I am wondering too, why, after lapse of so much time since the passage of the Holding Company Act, the Securities and Exchange Commission has not compelled the Commonwealth & Southern to comply with its terms. I am wondering also what Mr. Willkie was thinking about when he announced a few days ago that private power companies could not refinance their operations because of the activities of the TVA. It is apparent that Mr. Willkie was wrong when he said that private power companies could not refinance because the TVA operations had "scared" investors. It not only appears that Commonwealth & Southern would not permit the investors even to make a bid on the sale of these securities by its subsidiary, the Consumers Power Company of Michigan, but the holding company insisted, as has been the custom for years, on compelling the subsidiary to pay a higher rate of interest and permit the holding company to get a "rake-off" for itself.

MR. Willkie was quick on the reply to Senator Norris' attack, even though the latter was made over the week-end—a circumstance which in itself drew comment from Mr. Willkie. The Commonwealth & Southern president declared that the Norris statement was "absolutely false." He explained that about a year ago Consumers Power Company, with the approval of the SEC and the Michigan commission, purchased an electric property at Adrian, Mich. To finance this deal the Consumers Power Company issued and sold $2,000,000 worth of its first mortgage bonds. Commonwealth & Southern Corporation, in order to assist the Consumers Power Company in this purchase, as well as to increase the common stock equity behind the bonds, contributed $1,200,000 to the common capital of the Consumers Power Company although it already owned all of the common stock.

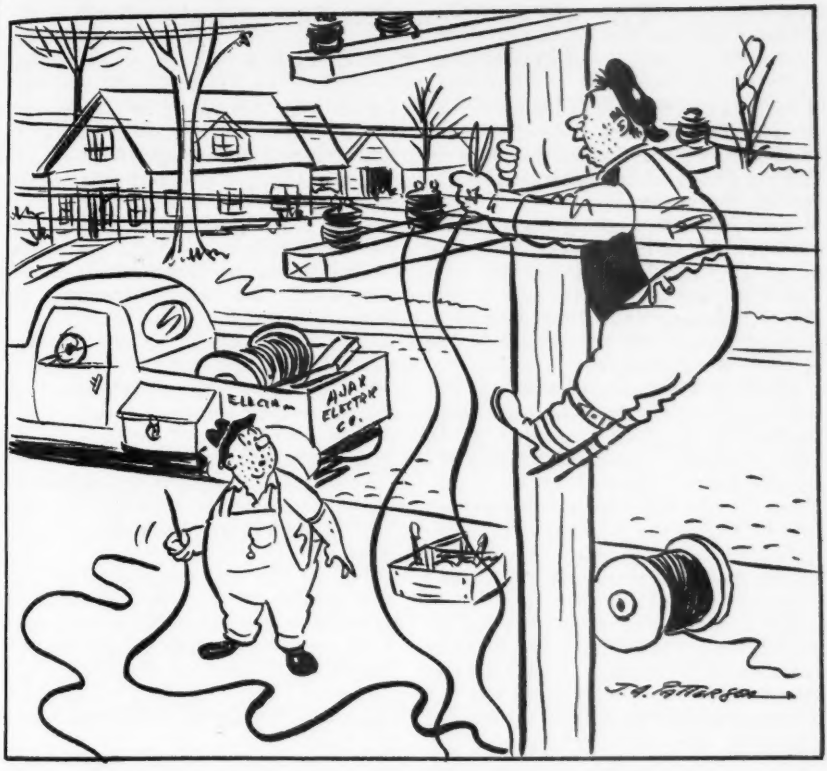
Mr. Willkie emphasized that at that time Commonwealth & Southern offered to receive payment for 1,200,000 common shares in the form of 20,000 shares at $60 a share. But the SEC and the Michigan commission both decided that it would be better for the parent company to receive payment for its $1,200,000 in the form of 46,000 shares at the book value of the stock or slightly less than $28 per share. That was a year ago. Mr. Willkie continued:

> On November 10th, the Consumers Power Company decided to sell $10,000,000 of bonds for new construction. Again, in order to assist the Consumers Power Company and to maintain the proper relationship between the bonds and common stock, we offered to contribute $3,500,000 additional to the common equity of the company. Again it made application to the public service commission of Michigan which authorized and instructed it to pay for said stock the book value; namely, $28.25 per share. Consequently, the Commonwealth & Southern Corporation expects in accordance with the order of the public service commission of Michigan, and after approval by the Securities and Exchange Commission, to receive 125,000 shares of the common stock for this additional contribution of $3,500,000 to the common equity of the Consumers Power Company. Thus the Commonwealth & Southern Corporation, although it at all times has owned all of the common stock of the Consumers Power Company, has voluntarily and for the purpose of building up the company, contributed within the last year almost $5,000,000 to the capital structure of the Consumers Power Company. Anyone with the slightest knowledge of the subject will say that this is one of the most constructive things that could be done for any utility company by its parent company.
>
> Since it owned all of the common stock of the Consumers Power Company, it makes no difference to the Commonwealth & Southern Corporation whether it receives 125,000 shares or one share of stock for the money it has voluntarily contributed to the capital of the Consumers Power Company.

APROPOS of Senator Norris' reference to the bond issue, it will be readily recalled that open or competitive bidding on the underwriting of utility bond issues is one of those debatable questions upon which the SEC has not yet taken a definite position. It is noteworthy, however, that in the Consumers Power Company transaction of a year ago, which Mr. Willkie mentioned, the SEC approved the issuance of $10,180,000 of first mortgage bonds 3¼ per cent, series of 1936, due in 1966. This was handled by a group of nine underwriting firms apparently according to a prearranged agreement which, in the words of the SEC opinion in that case, "netted the utility company a price of 102½ and accrued interest, which represents a cost of money to the company of 3.12 per cent."

These bonds were offered to the public at a price of 104½, resulting in a spread of two points.

It may be that, under a competitive bidding system, the operating utility company in this case could have obtained that amount of money for a similar term at a net cost of less than 3.12 per cent, but it is hardly likely that the difference would have been very substantial. In other words, the "milk" of which the operating company would be deprived by closed underwriting instead of competitive bidding could hardly contain a sensational amount of financial nourishment.



"CAN'T FEEL ANYTHING, YET? OK. DON'T TOUCH THE OTHER ONE—IT'S 5,000 VOLTS!"

REPRESENTATIVE Rankin of Mississippi, co-author with Senator Norris of the TVA bill and leader of the anti-utility bloc in the House of Representatives, picked up Senator Norris' criticism of the Consumers Power Company deal and turned it against the SEC. He called upon members of this commission to "enforce the law" or "get out," pointing out that the commission is delaying overlong in carrying out the provisions of the so-called "death sentence" clause of the Public Utility Holding Company Act.

Washington observers, as well as some newspaper editors, were wondering just what was the cause of the sudden administration bombardment on the utility front—a sector which had been unusually quiet for several months. The consensus seemed to be that like most bombardments it was probably a prelude to the launching of some new and important step in the administration's public power program, possibly through the agency of the National Power Policy Committee.

No reaction to Representative Rankin's individual attack upon them had come from the members of the SEC as the explosive month of November passed into history.

The FPC Considers Immediate Gas Rate Reductions

INAUGURATING a new technique in natural gas rate cases, attorneys for the Illinois Commerce Commission and the Federal Power Commission on November 8th filed a motion with the Federal Power Commission asking that the commission order an immediate reduction of the rates charged by Natural Gas Pipe Line Company of America and its subsidiary, Texoma Natural Gas Company, without waiting for termination of the hearing now in progress.

Harry R. Booth, attorney for the Illinois Commerce Commission, and George Slaff and D. A. Myse, of counsel for the Federal Power Commission, took the unprecedented step of accepting at face value for the purposes of this motion various evaluation figures put into evidence by the companies except with respect to rate of return and "going value."

The motion pointed out that the attorneys for the defendant companies had stated on October 6th that their case on direct evidence had been completed, but that cross-examination of the companies' witnesses, the introduction of complainant's evidence and evidence on behalf of the Federal Power Commission, the taking of the companies' rebuttal evidence and cross-examination thereon would consume additional time so that the close of the case would be delayed far into the future. The motion alleged:

> The evidence before the commission now clearly establishes that the present rates charged and collected by the Natural Gas Pipeline Company of America are unjust and unreasonable, and that to aid the complainant materially in fixing fair and reasonable rates for gas sold to ultimate consumers in the state of Illinois, it is necessary that an immediate interim order be entered reducing the rates and charges of Natural Gas Pipeline Company of America.

IT was alleged in the motion that the total net profit available to the stockholders after payment of bond interest, amortization of bond discount, and expenses was at least $8,244,436 for the seven years of the companies' existence, amounting to an average of $1,177,777 per year, or an annual average return of 39.3 per cent on the $3,000,000 capital stock of the Natural Gas Pipe Line Company of America.

One of the principal bones of contention during the hearing has been the term of years in which the investment should be amortized. The companies have claimed that investment should be amortized from the present time until the end of their source of supply of natural gas, while counsel for the state and Federal commissions insist that amortization should be figured on the basis of the entire life of the property beginning in 1932 when the companies began operations.

For the first time in a natural gas rate case an attempt is made, by means of this motion, to define what a fair rate of return on the investment should be. Under Subsection IV of the motion it was stated "that a fair rate of return for these companies is not more than 6 to 6½ per cent."

On the basis of exhibits submitted by the two companies of revenue and expense estimates for 1939, 1940, and 1941, and computed under the conditions advocated by counsel for the commission ("amortization over entire life of the property"), the excess of return over 6 or 6½ per cent would be between three and four million dollars for each of the years indicated. The motion claimed that the companies' average per cent of return on gross investment would be 12.1 per cent in 1939, 11.5 per cent in 1940, and 11.1 in 1941.

THE hearings now in progress are the outgrowth of the following sequence of events:

On September 23, 1938, a petition was filed with the Federal Power Commission by the Illinois Commerce Commission praying that citation be issued di-

recting the Natural Gas Pipeline Company of America and Texoma Natural Gas Company to show cause why the rates charged for natural gas in the state of Illinois should not be reduced, and further that an order be entered setting fair, just, and reasonable rates for such natural gas. On October 14, 1938, the Federal Power Commission, on its own motion, ordered an investigation to enable the commission to determine whether the rates or charges of the two companies are unjust and unreasonable, and if so to fix by appropriate order or orders just and reasonable rates or charges. On November 16, 1938, the defendants filed an answer to the petition contending that the rates or charges were reasonable and just and also contested the jurisdiction and power of the commission to enter an order or orders such as to affect the rates or charges of the companies. On April 14, 1939, the Federal Power Commission entered an order consolidating the two cases for the purpose of hearing, and fixed May 8, 1939, as the date of the first hearing, which was begun on that date at Chicago and continued for approximately fifty-five days, during which time thirty-seven witnesses appeared for the defendants and introduced 135 exhibits, and six witnesses and about 45 exhibits for the commissions were presented.

Notes on Recent Publications

AERIAL WARFARE IN INTERNATIONAL LAW. By William M. Wherry. Contemporary Law Pamphlets, Series 1939, Number 21. New York University School of Law. New York, N. Y.

THE ELECTRIC POWER INDUSTRY. By John Bauer and Nathaniel Gold. Harper & Brothers. New York, N. Y. Price $3.50.

A promotional letter sent out by the publishers of this volume calls it a "fair and impartial study of the growth of an industry" and, at the same time, asks the reader if this is "the kind of evidence you've been looking for," assuming that "you hope for the day when public utilities will be publicly owned and controlled." True, authors should not be held responsible for publishers' blurbs, but by coincidence the inconsistency suggested by these two statements seems to hit the nail right on the head in describing the temper of this volume. The authors have evidently started out with the premise that commission regulation has failed and that public ownership is the inevitable and socially desirable objective. To support this position they have drawn heavily from literature which is avowedly hostile to the continuation of private ownership.

A casual inspection of the volume's bibliography indicates how studiously the critics of regulation have been cultivated and how more conservative authority has been correspondingly ignored. Admittedly commission regulation is not perfection, but common sense dictates that those who are obviously convinced of its "futility" and inevitable dissolution are hardly trustworthy critics for its reformation as a continuing governmental device. If this book is a fair and impartial study of the electric industry, then the writings and speeches of Norman Thomas constitute fair and impartial analysis of American private enterprise in general, and Mr. Browder can qualify as an unbiased critic of the capitalistic system.

The book is divided into three parts. The first covers the development and importance of the electric power industry, the second private organization and management, and the third "public objectives and control." Aside from replowing fields of utility criticism which have long since been well harrowed by the FTC and the FPC, one outstanding original suggestion of the authors seems to be to return to home rule regulation. "Rate regulation could be made much more effective if municipalities had the power to fix rates by ordinance, and if the commissions retained jurisdiction to review municipal action." (Page 259.)

Two samples of somewhat less than careful handling of facts can be found on page 238, where the authors state that although some state commissions tried during the depression to avoid litigation by obtaining informal rate reductions from utility companies, "mostly their efforts were not particularly fruitful." Again, the authors' impression as to what the Supreme Court did about price index valuation in West *v.* Chesapeake & P. Teleph. Co. (1935) 295 U. S. 662, 8 P.U.R.(N.S.) 433, is really naïve. To those who have already decided that public ownership is the inevitable answer to the utility problem, this volume should be a consoling arsenal of selected ammunition.

UTILITIES IN THE WAR YEARS. *The Financial World.* September 20, 1939.

The March of Events

New Labor Bureau Study on City Electric Prices

SINCE 1913 the U. S. Bureau of Labor Statistics has published periodical information on the prices of electricity for residential use in 51 cities. These so-called "typical" cities were those in which the bureau had already been collecting food prices and other retail cost of living data.

These earlier electric price data, however, were confined to the unit cost of electricity to customers, based upon average family consumption in the various cities. These prices were used only in the computation of the bureau's cost of living indexes.

In 1934 the bureau, in coöperation with the Federal Power Commission, developed a method for computing typical monthly bills for four specified amounts of electricity, typical of average household requirements. The bureau also abandoned the old 1913 basis for computing such price indicia and adopted the uniform 1923-25 index basis which is used for its other cost of living data.

The most recent publication of the bureau, however, (released during the first week of December, 1939, although dated "February, 1939") surpasses in wealth of detail all of its former efforts on this subject. It was prepared with the expert assistance of the Federal Power Commission, Central Statistical Board, the Edison Electric Institute, and the editorial staff of *Electrical Merchandising*. It is entitled "Changes in Retail Prices of Electricity, 1923-1938, Bulletin No. 664."

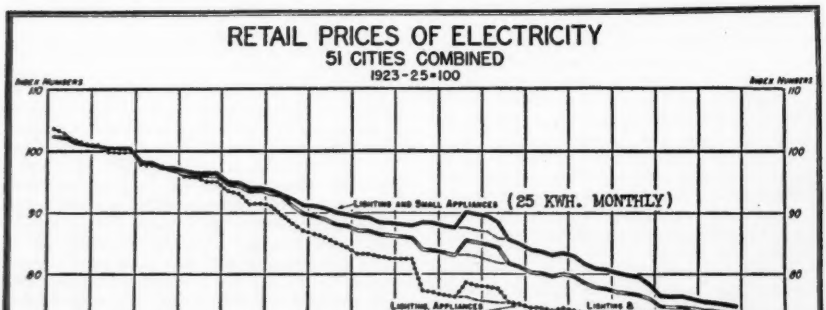
The steady decline in the retail prices of electricity during this period is graphically shown in the chart below, which appears in the Labor Bureau publication. Variation in prices during that time for each consumption block is shown in detail in the text of the bureau's publication for each of the cities covered.

The 51 cities selected by the bureau for this study, according to geographical divisions, are as follows:

New England: Boston; Bridgeport; Fall River; Manchester; New Haven; Portland, Me.; Providence.

Middle Atlantic: Buffalo; Newark; New York; Philadelphia; Pittsburgh; Rochester; Scranton.

East North Central: Chicago; Cincinnati; Cleveland; Columbus; Detroit; Indianapolis; Milwaukee; Peoria; Springfield.



West North Central: Kansas City; Minneapolis; Omaha; St. Louis; St. Paul.
South Atlantic: Atlanta; Baltimore; Charleston; Jacksonville; Norfolk; Richmond; Savannah; Washington.
East South Central: Birmingham; Louisville; Memphis; Mobile.
West South Central: Dallas; Houston; Little Rock; New Orleans.
Mountain: Butte; Denver; Salt Lake City.
Pacific: Los Angeles; Portland, Or.; San Francisco; Seattle.

The average decreases in the 51 cities covered by the survey ranged from 26.9 per cent for the use of 29 kilowatt hours monthly to 28.3 per cent for 40 kilowatt hours and 38.8 per cent for 100 kilowatt hours. Quarterly charges are shown by index numbers. The bulges in the descending lines from the middle of 1932 to the middle of 1933 (see chart) are due to the application of the Federal 3 per cent tax to consumers' bills during that period.

The study was confined mainly to an analysis of price changes for the use of 25 kilowatt hours, and an extended discussion of such changes admittedly "does not take into account the greater number of price reductions made for larger blocks of consumption." The stated reason for emphasizing the small block is that it was found that 63 per cent of urban consumers used an average of 60 kilowatt hours or less each month, and that the average consumption of that group was about 25 kilowatt hours.

The tabulation below shows the average number of customers in 51 cities served monthly in 1937 at specified consumption levels.

The Labor Bureau publication also contains a statistical study of the development of electric power in the appliance industry from 1923 to 1938, showing the degree of saturation on such units as flatirons, vacuum cleaners, washing machines, toasters, radios, refrigerators, ironing machines, and electric cooking ranges.

URBAN RESIDENTIAL CONSUMPTION OF ELECTRICITY—AVERAGE NUMBER OF CUSTOMERS IN 51 CITIES SERVED MONTHLY IN 1937 AT SPECIFIED CONSUMPTION LEVELS

Blocks of consumption in kilowatt hours	*Average number of customers*	*Percentage of total*	
		In Block	*Cumulative*
0- 10	329,653	5.8	5.8
11- 20	717,642	12.6	18.4
21- 30	828,545	14.6	33.0
31- 40	687,665	12.1	45.1
41- 50	557,983	9.8	54.9
51- 60	460,241	8.1	63.0
61- 80	715,681	12.6	75.6
81-100	481,417	8.4	84.0
101-150	532,237	9.4	93.4
151-200	182,285	3.2	96.6
201-300	123,468	2.2	98.8
Over 300	71,454	1.2	100.0
Total	5,688,271	100.0	100.0

Bonneville Contract Signed

SECRETARY of the Interior Harold L. Ickes on December 2nd announced that the Bonneville Power Administration and the Portland General Electric Company have entered into a short-term contract providing for delivery to the company of up to 20,000 kilowatts firm power and varying amounts of surplus power generated at the government-owned plant at Bonneville dam.

The contract does not provide for resale rates but specifies both parties will continue, with dispatch, studies with view to entering into long-term agreement containing such provision. It was signed by Paul J. Raver, Bonneville Administrator, acting for Secretary Ickes, and Franklin T. Griffith, president, and Major C. R. Peck, secretary, Portland General Electric Company, after months of negotiations.

Administrator Raver said delivery would begin immediately from Bonneville's St. Johns, Or., substation, just north of Portland. When the project's substation near Salem, Or., is completed, the company may take delivery of not more than 7,000 kilowatts at that point. Power will be transmitted to St. Johns over the "backbone" line of the Bonneville power network. Administrator Raver estimated the contract would result in annual revenue to the Bonneville project of $400,000 to $600,000, dependent upon amount of surplus power made available to and used by the power company. The company will be charged $17.50 a kilowatt year for firm power and 2½ mills per kilowatt hour for surplus energy.

The contract will run one year. In the event no agreement is reached on long-term contract by August 15, 1940, the company will have the option of extending the contractual period.

Appalachian Case Appeal

CHAIRMAN Clyde L. Seavey, of the Federal Power Commission, has made known the fact that a prompt appeal will be taken by the FPC from the recent action of the fourth U. S. Circuit Court of Appeals in upholding Federal District Judge Paul in the Appalachian Electric Power Company Case.

In this case the power company had proceeded to construct a hydroelectric plant on the New river at Radford, Va., without a Federal license, on the theory that the New river was not a navigable stream at that point and that the FPC had no jurisdiction. Both Federal courts agreed with this viewpoint, although Judge John Parker dissented from the opinion approved by his two colleagues on the circuit court bench.

The FPC had contended that the Federal Water Power Act of 1920, as amended in 1935, gave the commission jurisdiction not only over inland waterways which were navigable in fact, but over those tributaries thereof whose flow might affect the interest of interstate commerce. The circuit court in an opinion by Judge Chesnut found that the New river was non-navigable and that with respect to such waters "where a structure therein may prejudicially affect other navigable waters, the power of Congress is protective and preventive rather than directly regulatory; and in the latter case, as between the Federal and state governments, we are of the opinion that the power commission has no valid authority to impose conditions which in effect give the ultimate right of ownership of hydroelectric projects in state waters to the United States and thus take it from the state."

This emphasis upon states' rights in the matter of alleged jurisdiction of the FPC over inland waterways and tributaries was believed likely to stimulate renewed interest on the part of certain states, notably North Carolina, West Virginia, Oklahoma, and New England, which have displayed apprehension toward expanding Federal jurisdictional activity over interior streams. Furthermore, if the Supreme Court should uphold the lower court's mention of the fundamental jurisdictional basis upon which the Federal power site licensing system has been recently predicated, it will be destroyed.

Under the circumstances, it is believed likely that both sides will expedite preparation of appeal so that the case might be heard at the current term of the United States Supreme Court, although progress in the matter was slow in the lower courts.

Power Conferences Called

THE National Power Policy Committee recently scheduled a series of conferences with officers of 50 private electric systems to discuss methods of "meeting the country's future power demands." Secretary Ickes called the conferences as chairman of the committee. He said industrial demands for electric power recently had outrun the requirement forecasts made by both the committee and private industry.

The committee hoped, he added, to effect a "meeting of minds" with the utility officials on the extent to which they could satisfy demands in the event of a continued industrial upturn and at the same time assure adequate facilities for national defense.

Mr. Ickes announced that the conferences would start on December 5th and would continue until the committee had heard from all principal power areas. It was concerned chiefly, he said, with the industrial region north and east of the Mississippi river. He wrote to the power officials:

"The committee feels that the government and the power industry have a common interest in these problems and is eager to work out its plans in coöperation with you."

Aides said the conferences had to do principally with the business upturn, part of which they accredited to expectation of orders from Europe for war materials. The conferences, officials said, would not go into the controversial question of a national power grid, by which some sources have suggested that private and public power could be hooked for quick concentration of energy in event of national emergency.

President Roosevelt on December 1st indicated that current electric power production is adequate to meet business and industrial needs and sought to scotch rumors of another controversy between the administration and the utilities growing out of reports that public and private power sources might be coördinated under the limited national emergency.

The President said there was not now any emergency with regard to power production. In event of the United States becoming involved in war, he said he supposed there would have to be a number of steam stand-by stations linking public and private power sources throughout the nation. But he added there was no expectation of this country becoming involved in the war. The power situation was injected into the President's press conference when he was asked whether he agreed with plans for establishment of a grid system for the power industry. This was one of the matters to be taken up at the conferences called by the National Power Policy Committee with representatives of the industry.

The Federal Power Commission on November 26th reported the installed capacity of all electric generating plants reporting to the FPC was increased 3 per cent between December 31, 1938, and September 30th, this year, to a total of 40,203,969 kilowatts. Of this amount, the report said, publicly owned plants accounted for a capacity of 4,681,873 kilowatts.

Of the entire capacity, hydroelectric plants had 11,353,925 kilowatts, the commission re-

ported, with steam and internal-combustion plants accounting for a capacity of 28,850,000 kilowatts. The net increase in the installed capacity of hydro plants was 287,862 kilowatts. Major hydroelectric installations in the period were one privately owned 75,000-kilowatt plant in Virginia and two additional units at Boulder dam, increasing the capacity of this government-owned project by 165,000 kilowatts.

In the same period the capacity of steam and internal-combustion plants was increased by 874,002 kilowatts. Two additions to privately owned steam plants of more than 50,000 kilowatts each were reported, while one municipally owned steam plant added a 30,000-kilowatt installation.

Privately owned electric utilities had 8,928,870 kilowatts of hydroelectric generating equipment, or 78.6 per cent of the total hydro equipment. The installed capacity of privately owned steam and internal-combustion plants amounted to 25,530,571 kilowatts, 88.5 per cent of the total of these types of equipment.

The installed capacity of publicly owned generating plants is almost equally divided between water power and fuel-burning plants, with 2,359,004 kilowatts of the former and 2,322,869 kilowatts of the latter.

Railways and other noncentral station plants had 66,051 kilowatts of water power equipment and 996,604 kilowatts of steam and internal-combustion engine equipment.

Alabama

Rates Cut to TVA Scale

A SHARP reduction in rates of the Birmingham Electric Company, to establish schedules equivalent to TVA "yardstick rates," plus a percentage described as representing taxes, was approved on November 28th by the state public service commission. Birmingham several years ago voted down TVA power.

C. E. Oakes, BECO president, estimated the new schedule would result in a saving of $700,000 annually to Birmingham area electricity users. The cut in rates, Mr. Oakes said, averaged 14 per cent for residential users and from 10 to 33 per cent to commercial users, effective December 1st.

Property Sales Opposed

THE city of Troy, joining with several other towns in the area served by the Alabama Water Service Company, recently took means to slow down the sale of the properties of this company to an organization which will be known as the South Alabama Power Authority.

According to a statement by Mayor Seth Copeland, the Troy city council met on November 23rd and passed a resolution joining with Samson, Opp, and several other towns in a petition to the Alabama Public Service Commission to annul a recent preliminary authorization for the city of Andalusia to take over electric distribution properties of the Alabama Water Service Company in 9 counties in southeast Alabama.

Judge Walter B. Jones, of Montgomery Circuit Court, on November 24th issued a temporary restraining order to prevent formation of the power authority under a 1935 state law authorizing the organization of power districts. The order was directed against the city of Andalusia and the state public service commission. He said he would announce a hearing later on the question of making the restraining order permanent. The case will probably be fought out in the state supreme court.

REA Chief Accuses Utility

HARRY Slattery, Rural Electrification Administrator, last month accused the Alabama Power Company of employing "guerrilla warfare" tactics in an effort to thwart REA-financed coöperatives. He made the charge in letters to directors of the Butler County Electric Membership Corporation, the Pea River Electric Membership Corporation, and the Wire Grass Electric Coöperative, Inc., all of Alabama. He said he had allotted the organization $526,000 with which to supply electric service to farm families. Slattery said:

"Besides the need for quick action and hard work, you have a danger to face. That danger is the Alabama Power Company. It will attempt to delay and destroy your projects . . . The company is now practicing in many Alabama counties and particularly in St. Clair and Talladega counties the same tactics of obstruction and guerrilla warfare that it practiced a few months ago in Chambers and in neighboring counties."

Arizona

Rate Cuts Announced

PHOENIX and other points in the Salt river valley will pay less for electricity after January 1, 1940. The Central Arizona Light & Power Company recently filed a new rate schedule with the state corporation commission, effective that date, which will effect an

annual saving to power users of about $200,000, W. M. Cox, commission chairman, estimated.

The new rates affect approximately 26,000 power users in Phoenix, Tempe, Glendale, Buckeye, Scottsdale, Peoria, and Gilbert, as well as in other sections of the valley served by the company. Both commercial and residential rates are affected.

Company officials said the cut was the third in five years, making an aggregate reduction in that period of about $600,000, and the total reduction since 1923 was reported as about 48.5 per cent.

The new residential rate is to be 2 cents a day and 3½ cents per kilowatt hour for the first 120 kilowatt hours; 2½ cents for the next 130 kilowatt hours; and 2 cents for all additional hours, plus tax. The present rate is 2 cents a day and 4 cents per kilowatt hour for the first 100 kilowatt hours; 3 cents for the next 90 hours; and 2 cents per kilowatt hour thereafter, plus tax.

Substantial reductions were also announced for commercial and industrial users, the new rates applying to single or 3-phase service. The old combined lighting and power commercial rate has been reduced and changed to a general service schedule for lighting and power.

Reduced light rates were put into effect in Globe December 1st, officials of the Arizona Edison Company, Inc., announced recently. The reduction was the third made by the company since July, 1935, when the present company was organized.

Arkansas

Rate Reductions Ordered

THE state utilities commission last month directed the Arkansas Utilities Company to revise its rate structure downward so its electric customers at Helena and Marianna will receive reductions totaling $23,800 annually on the basis of 1938 consumption.

Reduced rates will be effective on consumption for which bills are sent out after January 31, 1940. The company would submit to the state commission proposed rates on various classes of service to effectuate the required reduction.

Chairman Thomas Fitzhugh said the commission's order, issued after a series of conferences, will reduce gross income of the company about 10 per cent on the basis of 1938 gross income. Company officials agreed to the reduction.

California

Outlines Power Plan

THE Pacific Gas and Electric Company late last month announced an offer to coöperate with the state water authority under which the former would undertake to distribute the power generated by the huge Shasta dam plant of the Central Valley project.

The offer took the form of a letter from President James B. Black to Frank W. Clark, director, California State Department of Public Works, supplementing previous letters and discussions between Black and Earl Lee Kelley, former department director. Black wrote:

"We are willing to enter into a firm contract, (a) to absorb the capacity of the Shasta plant up to 400,000 horsepower during the first five years of its operation, and (b) to purchase all the Shasta energy required to carry the load in excess of that supplied by the company's own hydroelectric plants and by the minimum use of its contract power and its steam-electric plants, consistent with sound operation and contractual obligations, until such time as the Shasta energy is completely absorbed."

Black declared PG&E would pay a price "equal to what equivalent power would cost the company if obtained from other sources," and that in his judgment it would "exceed the price paid to the United States government" at Boulder dam and that established in recent schedules at Bonneville dam. Black's letter continued:

"I am sure you will agree no purchaser can afford to pay a price for Shasta power greater than its fair value and that its fair value can best be ascertained by determining the costs of equivalent power from other sources.

"We believe this proposal is much more to the advantage of the water and power users, to Federal and local taxpayers, and to thousands of investors in securities of this company than any other conceivable method of absorption . . ."

Power Quota Raised

LOS Angeles received the first quota of an increased power supply from Boulder dam recently when the municipal bureau of power and light placed in service a new 275,000-volt transmission line. Under construction since last June, the power line was rushed to completion in order to meet peak demands of winter months.

With the new unit in operation an increase

of 50,000 kilowatts can be made in the quantity of Boulder dam power. Rated capacity of the twin transmission circuits that have been in service since 1936 is 240,000 kilowatts, E. F. Scattergood, chief electrical engineer and general manager, said.

The construction just completed extends 75 miles from a power switching station at Victorville to a receiving station in San Fernando valley.

Since first taking Boulder dam power in October, 1936, the bureau of power and light has delivered to local electric users a total of 3,378,114,000 kilowatt hours of electricity, for which it has paid the United States government $4,335,708.

Louisiana

Gets Gas Rate Cut

THE people of Baton Rouge and vicinity were given a share of the profits from the oil field recently developed south of the city in the form of a reduction of 16 per cent in the gas rates.

The Gulf States Utilities Company, with the approval of the state public service commission, announced that the flat rate reduction on all gas bills over the minimum of $1 would be effective on meter readings made on and after December 5th by reason of an agreement whereby the utility company will purchase a portion of its supply from the local field.

Gas heretofore had been provided exclusively from the north Louisiana fields through the pipe lines of the Interstate Natural Gas Company, which had a 35-cent gate rate to the utilities. Under the new arrangement the gate rate is reduced to 20 cents a thousand, the portion of the supply not available from the local field to be supplied by the pipe line from north Louisiana.

Massachusetts

Electric Rates Cut

MAYOR Thomas S. Burgin recently announced an agreement with the Quincy Electric Light & Power Company calling for a reduction in electric light rates, effective January 1st, with the approval of the city council and state department of public utilities.

The reduction will mean a saving of approximately $60,000 annually to local consumers, the mayor stated. Domestic consumers will save about 4 per cent on their present bills under the new rates. The new schedules affect domestic and commercial consumers.

The electric company estimated that approximately $30,000 would be saved by domestic consumers in the granite city. The schedule proposed for this particular type of consumer maintains the $1 minimum charge per month, which includes the first 16 kilowatt hours of electricity.

Mississippi

TVA Purchasing Properties

THE Tennessee Valley Authority early this month reached an agreement to close a contract December 15th for the purchase of the northeast Mississippi electric utility properties of the Mississippi Power Company, Chief TVA Power Engineer J. A. Krug disclosed recently.

Representatives of the power company (a subsidiary of Commonwealth & Southern Corporation), the TVA, and coöperating municipalities and electric coöperatives in Mississippi were to meet in New York to close the deal. The price set was $2,000,000.

Acquisition of the properties, known as the Columbus division of the Mississippi Power Company, will give the Authority a virtual monopoly on generation and transmission of power in Tennessee and northeast Mississippi.

The Authority's share of the purchase price, Krug said, would be $1,333,000 with the participating public agencies paying the balance. The remaining share will be divided as follows:

Four County Electric Power Association, $203,600.

Natchez Trace Electric Power Association, $181,600.

East Mississippi Electric Power Association, $39,800.

City of Louisville, $115,000.

City of Philadelphia, $127,000.

The proposed deal, it was said, would not include the cities of Columbus, Starkville, Aberdeen, and Macon, which are in the division area and which have built or are building their own distribution plants. However,

Krug said, the company had agreed to abandon its business in these areas and to arrange for disposal of its properties within six months after the contract is signed.

Starkville, he said, already has agreed to take over the power company's system in a separate deal, paying $22,000 for the distribution properties in the community. Similar negotiations were reported under way in the other three communities.

Under the terms of the contract, TVA will take over all transmission facilities and a small steam generating plant at Columbus, while the public agencies will act as distributing agents for cheap TVA electricity.

The TVA's service area in Mississippi at the conclusion of the deal will extend from the Tennessee border south to Macon and De-Kalb, Miss., and westward half-way across the state, including more than 5,000 customers.

After concluding the Mississippi deal, the Authority will turn to negotiations for the northern properties of the Alabama Power Company.

Nebraska

Gas Negotiations Concluded

CITY officials of Hastings have completed negotiations on a conditional contract providing for the supply of gas for a proposed municipal natural gas system. The contract calls for the city to purchase 600,000,000 to 800,000,000 cubic feet of gas annually from E. W. Dahlgren, Oklahoma City.

Voters first must approve establishment of the municipal plant, however, through purchase of the existing system or construction of a new one. City councilmen authorized negotiations for the purchase of the Central Power Company plant. F. E. Devling, consulting engineer, recommended construction of a new plant at an estimated cost of $387,-154. He filed a report which said establishment of the municipal system would allow a rate reduction.

To Test Power Law

THE city of Columbus and the Consumers Public Power District moved last month toward a test of the state law permitting municipalities to acquire electrical facilities from public power districts which have bought private power systems. The city paved the way for such a test when it adopted a clarifying amendment to the agreement under which the city proposes to take over the distribution system at Columbus—formerly operated by the Northwestern Public Service Company but now by the Consumers District.

Consumers District officials explained that purpose of a test case would be to establish the validity of the law so the district can market a bond issue to pay the Northwestern Public Service Company. Counsel for John Nuveen & Co., of Chicago, one of the financial concerns interested in the bonds, suggested the legal action. The test would put a part of the bitterly fought L. B. 168 before the state's high tribunal, adopted by the last legislature after days of argument.

Consumers officials said they have no wish to test that part of the law requiring public districts to pay the same taxes as were paid formerly by the private company. They said they are willing to pay such levies without controversy.

New Jersey

Tax Distribution Unlawful

A PAIR of 1938 laws giving the state tax commissioner power to distribute to municipalities gross receipts and franchise taxes on utility companies under his own system of apportionment were ruled unconstitutional November 29th by the court of errors and appeals.

The court, the state's highest law tribunal, termed the acts an attempt to "clothe an administrative officer with legislative power."

Decision of the court upheld the contention of Jersey City, Hoboken, and Camden that the laws unlawfully delegated legislative authority to the tax commissioner. The court voted 8 to 4 to reverse the state supreme court, which had upheld the laws.

Ohio

Gas Ordinance Passed

FOR the third time in two and a half years the Cleveland city council last month passed an ordinance to fix the Cleveland gas rate at an average of 55.2 cents a thousand cubic feet, compared with the 68.88-cent average now in effect.

The 55.2-cent rate was first demanded in legislation that went into effect July 1, 1937. The East Ohio filed an appeal from that measure with the state utilities commission, which last January decided that the proper charge for gas in the city should be the 68.88-cent average.

The commission decision was appealed to the state supreme court, which was expected to decide this month whether the present Cleveland rate is equitable or whether the public utilities commission must rehear the case.

Six months ago the council again passed a 55.2-cent gas ordinance, which will expire at the end of 1939 and which the company has appealed to the utilities commission. The ordinance enacted last month will take effect January 1st and run to July 1st. By that time, the city hopes, it will have obtained a supreme court reversal of the utilities commission decision fixing the Cleveland rate at 68.88 cents.

It also hopes that the Federal Power Commission will order a reduction in the wholesale rate paid for gas by the East Ohio to a sister company, the Hope Natural Gas Company of West Virginia.

Counsel for the gas company served notice that it would ask the commission to set aside the recent ordinance, which was said to create the possibility that before a Cleveland gas rate is ultimately determined three complete rate hearings will have been conducted before the commission and the same number of court battles fought.

Oklahoma

U. S. to Contest Authority

GOVERNOR Leon Phillips and Mac Q. Williamson, state attorney general, were informed recently that U. S. Secretary of War Harry Woodring had decided to contest their authority to ask the U. S. Supreme Court to stop work on the Red river dam.

Phillips and Williamson were furnished with copies of a brief filed with the U. S. Supreme Court by Robert H. Jackson, solicitor general, denying that Oklahoma should be permitted to present the matter to the high court. The governor and Williamson have asked the high tribunal to review their objections to the $54,000,000 project.

In denying that the governor has the right to be heard, Jackson stated that in his opinion the project and the congressional flood control are constitutional in every respect and beyond litigation. Jackson pointed out that the Red river dam is part of a national flood-control project in the Southwest and was outlined for the general public benefit.

The state's troubles over the two giant federally financed dam projects flared anew on December 1st with resignation of the man selected by Harold L. Ickes, Secretary of the Interior, to manage the $20,000,000 Grand river dam power unit. At the outset of a public ouster hearing on accusations brought by the state-controlled Grand River Dam Authority, R. V. L. Wright resigned as its $15,000-a-year general manager. He said "there was a question of policy involved. In the interests of the project this seemed the best way out of an impossible situation."

R. L. Davidson, of Tulsa, chief counsel for the dam board, was designated acting general manager.

The public hearing was requested by Wright when the Authority formally charged him with inefficiency after previously declaring he was unsatisfactory.

Gas Rates Upheld

THE customers of Oklahoma City lost their fight for lower gas rates recently when the state corporation commission held that present rates charged by the Oklahoma Natural Gas Company are reasonable.

The company declined to offer testimony after commission experts testified that the company was making a return of only about 5 per cent on its investment.

Oregon

District Hearings Set

HEARINGS on petitions for creation of the Clackamas and Yamhill county people's utility districts were fixed for December 29th by the state hydroelectric commission at Salem last month. Hearing on the Clackamas district will be held at Oregon City, while the hearing on the Yamhill district will be held at Dayton.

The proposed Clackamas district would include all of the settled portions of the county with the exception of the town of Canby, which is served by a municipal plant. Cities excluded from the Yamhill district include Newberg and McMinnville.

A proposal for creation of a Marion County People's Utility District will probably be referred to the voters at the primary election next May, it was said.

Pennsylvania

May Defer "Uniform Rate"

THE effective date of the state public utility commission's "uniform rate" order to the Pennsylvania Power & Light Company may be deferred for several months, or possibly until spring, it was said after a recent conference of company officials and the commission. It was said that the delay was necessary to permit adjustments of present rates for small business concerns.

Commissioner Richard J. Beamish said the conference had been called to prevent, if possible, increases the first of the year for thousands of small business concerns in the state.

Texas

Gate Rate Case to Be Reviewed

THE famed Lone Star Gas Corporation gate rate case, one of the major efforts of the state railroad commission to reduce charges, last month was admitted to review by the state supreme court because of the importance of questions involved.

Submission of the case, on appeal of the Lone Star from a court of civil appeals decision upholding validity of the reduction order, was set for January 17, 1940, before a 9-judge court.

Validity of an order of the commission reducing the gate rate on the Lone Star system from 40 cents to 32 cents a thousand cubic feet is involved in the suit, which already has made one trip to the U. S. Supreme Court. Rates of many thousand consumers in 270 cities and towns are affected by the order and the litigation.

Proceedings on which the rate order and the litigation are based began seven years ago. When the order was issued in 1933, the company enjoined its enforcement. After a month-long trial in 1934, a Travis county district court held the order unreasonable, but the Austin Court of Civil Appeals in 1935 reversed and rendered for the state, upholding its validity. After the state supreme court declined to grant a writ of error, the case was appealed to the U. S. Supreme Court, which reversed the state appellate court.

In its second opinion, which the high state court has agreed to review, the appellate court again arrived at the same decision that the order was valid but by a different route which it considered in conformity to holdings of the Supreme Court.

Plant Bonds Lose

FOR the fourth time in six years Gainesville voters last month rejected a proposal to issue revenue bonds for a municipal light plant. The vote was 525 for and 782 against issuance of $70,000 in bonds to expand the existing light and power system.

It was reported to be the most decisive defeat in such a referendum in the city.

Washington

Northwest Power Program Framers Confer

THE problem of distributing coming electrical power to the best advantage of everyone without detriment to existing agencies and companies was considered last month at a program-framing conference of bodies interested in the Industrial Natural Resources Survey.

Representatives of three Federal agencies, the Pacific Northwest Regional Planning Commission, the Northwest Regional Council, and the Bonneville project, joined with chamber of commerce officials, executives of municipal and private power companies, and engineers in a meeting held at Seattle.

All suggestions were made at round-table discussions. No definite action was taken, the group deciding to hold meetings in other sections of the Pacific Northwest before setting up an active program.

The Seattle Chamber of Commerce suggested formation of a joint power market commission, to include the Federal Power Commission, the United States Bureau of Reclamation, the United States Engineers, the Bonneville Power Administration, the Pacific Northwest Regional Planning Council, and other state agencies, to prepare a survey of the background for anticipated new industries.

The group agreed efforts should be centered on a few of "the most likely industries" to be established, and the working out of their entire problem—raw materials, power, transportation, financing, markets, and other considerations—to aid in development of the region.

The Latest Utility Rulings

Georgia Commission Explains Rate-making Principles in Electric Utility Case

THE recent decision of the Georgia commission that rates of the Georgia Power and Light Company should be reduced contains an exposition of the commission's views on rate-making problems. This case is described as the commission's initial effort to make a complete inventory and appraisal of a major utility with its own staff. For this reason, it is said, the commission proceeded with care and deliberation.

Because of numerous property transfers and reorganizations, it was impossible to determine the original cost of the property as an element of the rate base. The commission, therefore, based its valuation largely upon reproduction cost estimates. Although a witness testified to the effect that the market value of stocks and bonds is one of the elements to be considered in determining fair value, the commission said it was apparent that little weight could be given to this element as the securities of the company covered all its present holdings, including water plants and ice plants, as well as a packing plant.

Claims for overheads were radically reduced, the commission holding, among other things, that the application of 34.77 per cent to the base cost of steam plant other than land and buildings was excessive. Moreover, it was said, reproduction cost includes all necessary overheads and the addition of further overheads to a contractor's estimate cannot be justified. Organization and interest during construction were said to be the only overheads applicable to rights of way.

The commission said that it was prepared to and did recognize the element of going value, but it could not accept the formula employed by a company witness in arriving at the value of this element. There had been testimony of the cost of assembling and training personnel and tuning plant and equipment; operating plant at part load during the development period; establishing the business; establishing records; fixed charges on unused plant during the development period.

It was said to be inconceivable that the cost of training personnel necessary to manage and conduct the business of a reproduced company of this sort would be equal to two full months of the present total payroll of the company's entire seasoned and experienced force. The commission was not prepared to accept the theory of the gradual utilization of the facilities by the would-be customers of this reproduced property, stating:

> In this age of increasing use of electric energy on the part of those who are now provided with electric service and the increasing demands from those not now served with electric energy, as illustrated by the projection into this field of many electric coöperative organizations financed by the Rural Electrification Administration there is substantial proof of the fact that a very much higher percentage than one-half of the connected customers would be obtained upon the inauguration of the service.

The commission made no separate allowance for going concern value.

There was held to be no basis for the inclusion of any added sum for cost of financing, but such consideration as the rate of return might require was to be given full effect in the fixing of rates. Testimony had been given as to the percentages of bonds, preferred stock, and common stock for sound financing, and the yield required for each type of security. The commission said that this evidence had been offered because of the

company's reliance on United States Supreme Court cases, where this cost was disallowed on account of the absence of evidence of such cost having actually been incurred as an expense.

A substantial part of the management fees paid to affiliated interests was disallowed. The commission said there would be no justification for basing a service charge on the amount paid for purchased power, and especially so in the instant case where the payment was made to another service paying company. Evidence introduced was held insufficient to support the reasonableness of intercompany payments. By far the greater portion of the charges were said to be for the benefit of the holding company and its affiliated service companies.

The commission recognized the necessity of setting aside a sufficient sum annually to cover accruing depreciation not taken care of through maintenance, but the commission disapproved the basing of the allowance upon gross revenue. Annual depreciation expense, it was declared, should properly be determined as a per cent of depreciable property. *Re Georgia Power & Light Co. (File No. 16498-1, Docket No. 5312-A).*

Condemnation of Land for Power Project Authorized

On appeal from an appraisal in an action brought by a power and irrigation company for the condemnation of lands lying within the bed of a reservoir which is in process of construction, the landowner filed a motion to dismiss, challenging the jurisdiction of the court. The Federal district court denied such motion.

The court held that in such a proceeding to which the United States and the Federal Power Commission were not made parties the landowner's motion to dismiss, challenging the validity of a Federal license granted to the district by the commission, constituted a collateral attack on the commission's order, and that the district court had no jurisdiction to pass on the validity of the license in view of statutory provisions, not availed of by the owner, affording an opportunity for interested parties to be heard before the commission before the license is issued and to appeal.

The court further stated that an action to annul and set aside an order of a Federal commission must be brought against the United States. It was stated:

> The Federal Power Commission and this court, in considering the questions presented, are not confined to the calculations of engineers. We take judicial notice of what we see around us. The engineers seemingly base their calculations on the fact that in order for these rivers to come within the jurisdiction of the Congress, that the affectation of interstate commerce must be constant and continuous. I can read no such provision in the statute. . . . That these waters carry great quantities of silt and débris is a matter of common knowledge. This silt and débris is deposited in the Missouri river and must necessarily find its place in the channel erected for navigation. I am well aware that some judges have held that streams such as the North Platte are not subject to the jurisdiction of the power commission, and have persuaded themselves by a line of reasoning which to me is not persuasive. I am unable to satisfy my mind in a determination of when a river, once determined to be navigable, ceases to be affected by its upper reaches in gathering the waters for its flow.

In reply to the contention that the purpose of the development is not for the purpose of serving navigation but is to serve other purposes, that is, to produce power and irrigation for a large tract of land, it was held that the fact that other purposes than navigation are also to be served could not invalidate the exercise of the authority conferred, even if those other purposes would not alone have justified an exercise of congressional power.

Congress, the court opined, was not actuated solely by an attempt to regulate power and irrigation plants, as such, when it delegated to the Federal Power

Commission power and authority to regulate waters that affect navigation.

In conclusion the district court said that it will not presume that when the Federal Power Commission issued a license to a power and irrigation company upon a showing that included in its purpose the development of power and navigation, the commission thereby had no purpose to aid navigation and that its real and only purpose was to aid power projects and irrigation. *Harris v. Central Nebraska Public Power & Irrigation District, 29 F. Supp. 425.*

Common Carriers' Duty to Serve Unaffected by Strike

THE supreme court of Washington affirmed a judgment of the superior court which had, in turn, affirmed a commission order suspending the permits of motor carriers because they failed to transport freight to and from a hotel at which a strike was in progress. The local manager of the labor union had forbidden the carriers to cross the picket line.

The court held that the trucking companies, being common carriers, had the duty to send their trucks through the picket line to pick up and deliver freight at the hotel notwithstanding the prohibition by the labor union officer.

In deciding whether or not the action had become moot, the court stated:

> If the question has become moot, it is solely by reason of the fact that a few days before the hearing in the department, the managing agent of the Teamsters' Union permitted the trucks to cross the picket line. This action on the part of the manager of the union fell far short of making the question on the merits moot.

It was held that the provision in the tariffs of the trucking companies releasing them from picking up and delivering freight at locations from and to which it is impracticable to operate trucks on account of certain conditions, one being strikes, did not release such companies from their obligation to deliver freight to the hotel, since at the picket line there was no violence or disturbance of any kind, and no one passing through the line was molested in any way, and that the word "impracticable" as used in such tariff clearly referred to the conditions at the picket line. *Consolidated Freight Lines et al. v. Department of Public Service et al. 94 P. (2d) 484.*

Regulation of Itinerant Merchants

BY legislation effective September 19, 1939, there has been conferred upon the California commission regulatory and licensing jurisdiction over itinerant merchants. Persons engaging or desiring to engage in that business must now satisfy the commission as to their character, responsibility, and good faith. They must also execute surety bonds conditioned upon the use of honest weights, measures, and grades, upon accurate representation as to quality or class of goods sold, upon actual payment of checks, drafts, or notes, and similar instruments issued for goods purchased, and upon the actual performance of conditional sales, consignment, or security contracts made in connection with goods sold. They must keep proper records of their transactions. This legislation was designed to alleviate marketing evils which had resulted in detriment to motor carriers, producers, and dealers.

A proposed modification of minimum rates established for transportation of hay was deferred by the commission pending a reasonable time for the operation of the new statute. Carriers asking for a reduction in minimum charges did not contend that minimum rates in effect were in excess of the cost of performing the service or were unreason-

able in themselves. Their sole complaint was that because of the activities of irresponsible itinerant merchants the market had become so depressed that dealers could not afford to pay the established minimum rate.

These itinerant merchants had resorted to the practice of purchasing hay at producing points and transporting and selling it at consuming markets. Formerly producers dealt with dealers who purchased in volume and who were able to stabilize market prices. Under the new conditions, however, they must deal with itinerant merchants who are generally irresponsible and whose need for a quick disposal of their hay causes them to sell at prices which demoralize the market. It was hoped that the new statute would remedy the condition without a reduction in minimum rates. *Re Rates, Rules and Regulations of Common Carriers (Decision No. 32418, Case No. 4293).*

New Franchise before Expiration of Earlier One Upheld

THE public policy of the state, according to a ruling of the court of appeals of Kentucky, no longer prohibits a municipality from granting a franchise before expiration of a similar one in operation.

This ruling was made in a decision upholding a 20-year franchise sold by the city of Pikeville in 1934 to the Kentucky & West Virginia Power Company, four years before the company's existing franchise had expired.

Citizens of Pikeville had challenged the validity of the second franchise on the ground that the city council had acted prematurely. They claimed the franchise was awarded without due notice and that someone had bid more than the power company. The court held that the proposed sale had been legally advertised and that the other bid had been properly rejected for failure to make a deposit as required. *Hatcher et al. v. Kentucky & West Virginia Power Co.*

Power to Require Service

IN a suit to enjoin the enforcement of orders of the Montana commission requiring a railroad to continue service, it was held that the state could require carriers to furnish reasonable and adequate facilities to serve not only the local necessities, but, in addition, the local convenience.

It might require additional service in a proper case, although the property of carriers is entitled to full protection and cannot be taken without just compensation or due process of law.

Continued operation of trains was said to be a convenience and necessity where the evidence indicated that several places were served only by trains and not by busses and trucks, while winter weather conditions were adverse to maintaining adequate highway transportation. *Great Northern Railway Co. v. Nagle et al. 28 F. Supp. 812.*

Restoration of Rates after Competition Ends

THE California commission approved carrier rate adjustments which appeared to be justified by a showing of changed conditions. It stated:

> Manifestly rates which have been depressed for the purpose of meeting competi-

tion of unregulated carriers should be permitted to be restored to a normal level when the competition is stabilized. Only by so doing can the continuation of adequate rail service be assured and the burden which otherwise must be placed on commodities not so severely affected by competition lessened. Similarly, minimum weights reduced below the level most conducive to efficient use of rail equipment should be permitted to be restored where the competitive reason for the reduction no longer obtains. In the instant case it appears that the influencing factor for the reduction in the rail minimum weight was the practice of truck carriers of assessing rail carload rates in connection with shipments of less than the rail minimum weight. With the fixation of minimum rates in this proceeding this practice will no longer be permissible and the competitive need for the reduction in the rail minimum weight will thus be removed.

The commission, in its order, established new rates for the transportation of petroleum and petroleum products by motor carriers and also authorized railroads to increase existing carload rates for the transportation of such products. *Re Rates, Rules and Regulations of Common Carriers (Decision No. 32425, Case No. 4246).*

Public Interest Is Superior to Interests Of Carriers

THE California commission authorized a trucking company to operate as a highway common carrier of property in the custody of certain common carriers between designated points over the objections of protesting motor carriers. The new service was to be limited to the transportation of freight and express in the custody of the Southern Pacific Company, Pacific Motor Transport Company, Railway Express Agency, Inc., and any other carrier of the same class.

Store-door pick-up and delivery service would be furnished at such points and within such limits as might be provided by the rail or express tariffs. Concerning objections to the new service, the commission said:

> This case presents the usual conflict arising between the rail carrier which seeks to improve its service and the highway common carrier who opposes such a step because it may intensify the competition he is called upon to meet. Between the two stands the public, whose interest both carriers alike are called upon to serve. Though it is important to weigh the conflicting equities of the carriers, it is even more essential that the public be accorded full opportunity to enjoy the benefits flowing from any improvement in service effected by a carrier already in the field.

Re Pacific Motor Trucking Co. (Decision No. 32414, Application No. 20806).

Pennsylvania Full Crew Act Held Invalid

THE Pennsylvania Supreme Court affirmed a decision of the Dauphin county court which held that the state's full crew law was illegal. It was decided that the law would not promote safety. The new statute had been attacked by 49 railroads which charged that it would increase operating costs of the railroads in the state by $8,400,000 a year. The court said:

> The act is a regulatory measure within the class of legislation under which the public utility commission acts. The commission, as an arm of the legislature, has power to make certain regulations for utilities, but if the cost of compliance therewith is arbitrarily and unreasonably oppressive, such orders will be held void. The fact that the legislature has promulgated such regulations by its own general statute does not exempt them from judicial review. The act of either body is subject to review by the independent judgment of a judicial tribunal.

The statute, enacted in 1937, would have required two men on the front end of each electric train, a baggageman on

locked cars, additional yard crews, and brakemen on passenger train cars carrying no passengers, and an additional brakeman in the caboose of a freight train. *Pennsylvania Railroad Co. v. Driscoll.*

Other Important Rulings

THE California commission held that the maintenance of noncompensatory rates for small shipments and the causing of heavier shipments to bear the deficit would discriminate against those shippers who have only large shipments. *Re Rates, Rules and Regulations of Common Carriers (Decision No. 32401, Case No. 4246).*

The supreme court of Arizona held that the statutory provision that the commission may not authorize a common carrier to operate in territory being served by another such carrier unless the existing carrier fails to provide such service as is deemed necessary by the commission, does not protect the certificate holder which has deliberately failed in its full duty to the public, nor does it apply to an applicant offering a different service which the public convenience and necessity require and which the certificate holder cannot furnish. *Corporation Commission et al. v. Pacific Greyhound Lines, 94 P. (2d) 443.*

The California commission held that it has the power to punish for contempt but that such power should not be abused and should be exercised only when necessary to insure a respect for, and observance of, its orders. *Re Carlstrom (Decision No. 32426, Case No. 4286).*

The Wisconsin Supreme Court held that a municipality which was furnishing water to another city could not object to a commission order authorizing a town to construct certain water facilities within its territorial limits, on the ground that the other city would furnish a water supply to the town, since the order of the commission did not adopt any source of water supply for the property and the order permitting the construction of the necessary facilities in the town was no concern of the protesting city. *City of Milwaukee v. Public Service Commission et al. 287 N. W. 682.*

The supreme court of Washington held that the word "may" used in a statute providing that the commission may, within twenty days after entry of judgment in any action of review, constitute an appeal to the state supreme court, must be construed to mean "must" so as to require that appeal be taken within the twenty days. *State ex rel. Department of Public Service v. Northern Pacific Railway Co. et al. 94 P. (2d) 502.*

The supreme court of Alabama held that where the standards of equipment essential to a well-regulated utility require the replacement of the old with a new and improved type, it is the right and may become the duty of the utility to require installation of the new. *Alabama Power Co. v. Henson, 191 So. 379.*

The supreme court of New Jersey held that a railroad is required to repair only that section of a county highway which constitutes an underpass within the bounds of the railroad right of way, although such highway is relocated for a distance of at least 1,100 feet, pursuant to a statute authorizing the commission to order a railroad to alter a dangerous grade crossing by substituting a crossing not at the grade of such public highway by relocating the highway. *Hudson County v. Public Utility Commissioners et al. 8 A. (2d) 556.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

Titles and Index

TITLES

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Re Kansas Pipe Line & Gas Company

[Docket No. G-106.]

Re North Dakota Consumers Gas Company

[Docket No. G-119.]

[Opinion No. 39.]

Certificates of convenience and necessity, § 53.5 — When required — Natural gas extension — Presently served market.

1. A market in which natural gas is already being served, within the meaning of the provision of the Natural Gas Act requiring a certificate of convenience and necessity for construction or operation of facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, does not mean only those communities in which there are presently existing physical facilities for the transportation and sale of natural gas, but the word "market" implies an area or territory of undefined extent bearing some reasonable relation to existing pipe lines and other facilities for the transportation and sale of natural gas; the word "market" embraces that territory within which a natural gas company can economically render adequate service by reasonable extensions of its facilities, having due regard among other factors to the sufficiency of its available reserves of natural gas, p. 327.

Monopoly and competition, § 6 — Jurisdiction of Federal Commission — Natural gas pipe-line extension.

2. The jurisdiction of the Federal Power Commission, under § 7 (c) of the Natural Gas Act, attaches to the proposed construction and use of pipe lines by an interstate natural gas company to a market or markets in which natural gas is already being served by another natural gas company or natural gas companies, even though in the communities to be served there are not presently existing physical facilities for the service of natural gas, but the new area is located within the market of an existing company, p. 327.

Certificates of convenience and necessity, § 77 — Grant or denial — Natural gas lines — Sufficiency of supply.

3. Applicants who contend that public convenience and necessity require or will require the construction of facilities for the transportation of natural gas must show that they possess a supply of natural gas adequate to meet those demands which it is reasonable to assume will be made upon them, p. 332.

Certificates of convenience and necessity, § 104 — Grant or denial — Natural gas line — Sufficiency of supply — Contract with producers.

4. The Commission could not issue an unconditional certificate of public

convenience and necessity, or authorize the issuance of such an unconditional certificate, for the construction of natural gas lines until the Commission has received assurance in the form of a contract satisfactory to it that a reserve of natural gas purportedly available to the company is actually available upon firm commitment, where there is an ample reserve of gas available but no firm commitment between the owners or potential producers of that reserve and the natural gas company, p. 333.

Certificates of convenience and necessity, § 77 — Grant or denial — Adequacy of facilities.

5. Applicants must show that facilities for which they seek a certificate are adequate to render a full and complete public service in the territory proposed to be served, p. 337.

Certificates of convenience and necessity, § 77 — Grant or denial — Ability to finance project.

6. Applicants for certificates of convenience and necessity should show that they possess adequate financial resources with which to construct the facilities for which certificates are sought, p. 342.

Certificates of convenience and necessity, § 77 — Grant or denial — Ability to finance project — Commitment from financial agency.

7. The Commission cannot authorize the issuance of unconditional certificates, or make a finding that the present or future public convenience and necessity requires or will require the construction and operation of proposed facilities, where applicants proposing to rely upon financing by the Reconstruction Finance Corporation have not submitted firm commitments from that corporation that it will loan applicants the necessary funds, the record being silent upon the subject of the terms, conditions, type of security, method of repayment, amount, and other details of any financing program, p. 342.

Certificates of convenience and necessity, § 158 — Procedure — Dismissal or requirement of further showing — Financial ability.

8. The Commission, instead of denying and dismissing applications for authority to construct natural gas pipe lines solely for lack of proper financial support, where applications to the Reconstruction Finance Corporation have been held in abeyance pending the grant of certificates by the Federal Power Commission, should require the applicants to make further showing satisfactory to the Commission that they have secured adequate finances with which to prosecute the proposed undertaking, p. 342.

Certificates of convenience and necessity, § 168 — Grant or denial — Proof as to construction costs.

9. Applicants for certificates of convenience and necessity should show that the costs of construction of the facilities which they propose are both adequate and reasonable, p. 343.

Certificates of convenience and necessity, § 88 — Meaning of public convenience and necessity.

10. Any definition of the term "public convenience and necessity" must fundamentally have reference to the facts and circumstances of each given case as it arises, as the term is not susceptible of precise definition, p. 345.

Certificates of convenience and necessity, § 88 — Meaning of public convenience and necessity.

11. The term "public convenience and necessity" does not mean indispens-

ably requisite but means a public need or benefit without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or comfort or both, without which the public generally in the area involved is denied to its detriment that which is enjoyed by the public of other areas similarly situated; the phrase does not mean an absolute necessity but rather a reasonable necessity, p. 345.

Certificates of convenience and necessity, § 88 — Meaning of "public."

12. The "public" whose convenience and necessity are the subjects of inquiry on an application for a certificate of public convenience and necessity is that public which exists in the area or territory proposed to be served, not merely the applicants or those persons or towns who believe they would benefit from the proposed construction, p. 345.

Certificates of convenience and necessity, § 104 — Natural gas extension — Public benefits.

13. The convenience and necessity of the public will be served by the introduction of natural gas service where there is no existing natural gas service, providing that those who seek to render that service can meet the minimum standards designed to secure such service on a continuous and adequate basis, p. 346.

Certificates of convenience and necessity, § 168 — Evidence of necessity — Certificate of state Commission.

14. The fact that a state Commission has issued certificates authorizing the extension of natural gas service into a certain area confirms a conclusion by the Federal Power Commission that natural gas service therein will serve the convenience and necessity of the consuming public in that area, p. 346.

Monopoly and competition, § 3 — Coal, labor, and railroad interests — Natural gas extension.

15. The duty of the Commission, in passing on applications for authority to construct natural gas pipe lines into new areas, is to safeguard the convenience and necessity of the public as it may be affected by such a project constructed into markets where natural gas is already being served by another natural gas company, and the Commission is not required to consider the adverse effect upon coal, labor, and railroad interests, as Congress by enactment of the Natural Gas Act did not intend the Commission generally to weigh the broad social and economic effects of the use of various fuels, p. 347.

[October 24, 1939.]

APPLICATIONS *for certificates of convenience and necessity authorizing construction and operation of facilities for transportation and sale of natural gas in interstate commerce; rulings made on certain issues and applicants required to make a further showing.*

APPEARANCES: Allen V. Junkin, George W. Burton, John P. Devaney, for the Kansas Pipe Line & Gas Company; John R. Curry, John C. Benson, for the North Dakota Consumers Gas Company; John C. Benson, for the Montana-Dakota Utilities Company; Frank W. Murphy, for the

Public Service Gas Company; Milton K. Higgins, for the North Dakota Railroad Commission; Charles W. Stadell, for the Illinois Coal Traffic Bureau; J. Carter Fort, R. V. Fletcher, for the Association of American Railroads; Earle C. Calhoun, for the National Bituminous Coal Commission; George D. Horning, Jr., for the National Coal Association and the Truax-Traer Coal Company; F. H. Stinchfield, C. W. Fiddes, for the Maher Coal Bureau; B. E. Urheim, for the Northwestern Retail Coal Dealers Association; Richard J. Connor, Assistant General Counsel, R. E. May, E. H. Lange, Justin R. Wolf, for the Federal Power Commission.

By the COMMISSION: Kansas Pipe Line & Gas Company and North Dakota Consumers Gas Company have each filed applications under § 7 (c) of the Natural Gas Act for certificates of public convenience and necessity, authorizing the construction and operation of facilities for the transportation and sale of natural gas in interstate commerce. Both applicants desire to construct facilities for the transportation of natural gas in interstate commerce to certain specified towns in eastern North Dakota and western Minnesota, but aside from these specific points of conflict the proposed projects are dissimilar both as to route and territory proposed to be served.

Section 7 (c) (15 USCA, § 717 g (c)) of the Natural Gas Act provides:

"No natural gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: *Provided, however,* That a natural gas company already serving a market may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates. Whenever any natural gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission. In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."

After appropriate public notice had

been given, public hearings on both of these applications were held beginning March 27, 1939, and concluding April 20, 1939. Pursuant to § 17 of the Natural Gas Act and Part 67 of our Provisional Rules of Practice and Regulations under the Natural Gas Act, whereby provision is made for the participation by interested state regulatory Commissions in hearings on matters of mutual interest pending before us, the privilege of such participation was extended to the North Dakota Railroad Commission and the Honorable S. S. McDonald, a member of that Commission, sat with the examiner during the hearings on these matters.

By appropriate order each applicant was granted permission to and did intervene and oppose the application of the other. By appropriate order the Montana-Dakota Utilities Company was granted permission to and did intervene and oppose the granting of the application of the Kansas Pipe Line & Gas Company (Docket No. G–106).

Prior to the holding of the hearings above referred to, certain representatives of coal, railroad, and labor union interests petitioned to intervene and oppose either or both of the applications. At various times and by appropriate orders in the premises, all of these petitions to intervene were denied, but the petitioners were granted the privilege of participation in the hearings held in these matters to the extent of appearing at the hearings, adducing relevant and material evidence and filing briefs. All parties, interveners, and limited participants appeared at the hearings, participated therein to the extent permitted by orders of the Commission and have filed briefs.

The Proposed Facilities for Which Certificates Are Sought

The Kansas Pipe Line & Gas Company (hereinafter referred to as the Kansas Company) proposes to build pipe lines for the transportation of natural gas in interstate commerce from a point in what is known as the Hugoton gas field located in the southwestern corner of the state of Kansas to a point on the Mesabi Iron range located in northeastern Minnesota. The proposed main pipe line, branch lines, and lateral lines will extend a distance of approximately 1,300 miles and running northeasterly from the point of origin would, if constructed, traverse or enter the states of Kansas, Nebraska, South Dakota, North Dakota, and Minnesota. From a point on the proposed main line in Stevens county, Minnesota, the applicant proposes to build a branch line which will transport gas to the cities of Moorhead, Crookston, and East Grand Forks in western Minesota and Fargo and Grand Forks in eastern North Dakota, among others. Over the entire route of the proposed facilities the Kansas Company intends to provide natural gas for resale or direct distribution in some 129 communities, as well as directly to serve individual industrial consumers along its proposed route. The Kansas Company contemplates that natural gas will be utilized on the Mesabi Iron range in Minnesota not only for the ordinary purposes to which natural gas is put, but also that it will be utilized in what is known as the magnetic roasting

process for the beneficiation of iron ore; on the Cuyuna range, which is located south of the Mesabi range, the Kansas Company contemplates the utilization of natural gas not only for ordinary purposes and in the magnetic roasting process, but also for heating and agglomeration in a process designed to produce high-grade manganese from the manganiferous ores which are found on the Cuyuna range.

The North Dakota Consumers Gas Company (hereinafter referred to as the North Dakota Company) proposes to build pipe lines from Mandan, North Dakota, eastward through Fargo, North Dakota, to Moorhead, Minnesota, and northward from Fargo, North Dakota, along the North Dakota-Minnesota state line to Grand Forks, North Dakota. A branch line will be built eastward from Grand Forks to East Grand Forks, Minnesota, and from a point below Grand Forks in Grand Forks county, North Dakota, to Crookston, Minnesota. The proposed facilities will approximate 198 miles in length. Applicant proposes to sell natural gas for resale and distribute natural gas in various cities and towns, and to various corporations, state institutions, and individuals along the route of the proposed lines. With the exception of the towns of Fargo and Grand Forks, North Dakota, and Moorhead, Crookston, and East Grand Forks, Minnesota, the two applications are not in conflict either as to route or communities proposed to be served.

Some mention should be made here to the corporate character of the North Dakota Company. This applicant received its charter on December 9, 1938, and is purportedly a coöperative corporation. It was not possible to organize this company under the Cooperative Corporation Statute or the Rural Electric Administration Statute of North Dakota, but certain features of its charter are stated to follow the coöperative scheme. It is anticipated by the organizers of the company that the consumer will benefit from the coöperative features. The articles of incorporation limit the payment of dividends to a preferential dividend of $3 per year per share on the $50 par value preferred stock and 80 cents per share a year on the $10 par value common stock; surplus profits may be used only for the declaration of dividends, the discharge of corporate indebtedness, the building up of a reserve for the retirement of property, or reducing the cost of natural gas to the consumer through some plan of bill discount, rebates, rate reductions, etc. The company is capitalized for $250,000 represented by 3,000 shares of preferred stock of a par value of $50 per share and 10,000 shares of common stock at a par value of $10 per share. The paid-in capital stock of the company is $150. Each stockholder is to have one vote, only, irrespective of the number of shares of stock which that stockholder may hold. No indication of the manner of disposing of the common stock has been given. The record discloses that the present personnel of the company has had no experience in the operation of a natural gas company. The record does not at present contain a sufficient showing as to the plans for operation and management of the company.

The Commission's Jurisdiction in the Premises

[1, 2] Section 7(c) of the Natural Gas Act does not require that all construction or operation of facilities for the transportation or sale of natural gas in interstate commerce be under a certificate of public convenience and necessity issued by this Commission. The pertinent part of § 7(c) provides:

"*No natural gas company* shall undertake *the construction or extension* of any facilities for *the transportation of natural gas to a market in which natural gas is already being served by another natural gas company . . . or engage in transportation by means of any new or additional facilities or sell natural gas in any such market,* unless and until there shall have first been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: . . ." (Italics ours.)

The statute sets forth one primary factor on which the Commission's jurisdiction rests: the facilities which are to be constructed or operated must be for the "transportation of natural gas *to a market in which natural gas is already being served by another natural gas company.*"

The statute is not specific, however, as to the definition of that factor. It does not expressly define the word "market" or the phrase "market in which natural gas is already being served."

We feel that this word and phrase are not susceptible of precise and rigid definition which can be applied in all cases but rather that these terms depend for their meaning upon the independent facts and circumstances presented by each case. The capacity of existing pipe lines to serve proposed new territory; the availability of adequate financial resources to pay for proposed construction; the availability of adequate supplies of natural gas; the economic feasibility of the proposed extensions or new construction —all or some of these and other factors may affect the delineation of what new or unserved area is within a "market," and are properly matters for us to consider in our resolution of the jurisdictional problem.

We do not feel that "market in which natural gas is already being served" can mean only those communities in which there are *presently existing physical facilities* for the transportation or sale of natural gas. The legislative history of the Natural Gas Act, as manifested in the hearings, the reports of the House and Senate Committees and the congressional debates, indicates clearly that Congress intended the word "market" to imply an area or territory of undefined extent, bearing some reasonable relation to existing pipe lines and other facilities for the transportation and sale of natural gas.

Examination of the legislative history of the act, as well as analysis of its provisions, indicates that Congress intended the word "market" to embrace that territory within which a natural gas company can economically render adequate service by reasonable extensions of its facilities, having due regard, among other factors, to the sufficiency of its available reserves of natural gas.

In § 7(c) of the act, for example, we find the proviso that a natural gas company "may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates." As the prohibitions of the act relate to "sales for resale," this permission clearly comprehends extensions to unserved communities within the territory in which the company operates.

It is important to note the statute does not give a natural gas company an unrestricted monopoly within such a market or territory. On the contrary, it provides that, in passing on applications for certificates of convenience and necessity, "the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold . . . at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."

Concrete illustrations may serve to clarify these general considerations. For example, a city presenting a reasonably desirable load may lie some 75 miles from the present terminus of an existing pipe line. If such community could be economically served by ordinary extensions of existing facilities without impairing the service of present customers, it might reasonably be viewed as included within the market of the natural gas company owning such facilities. But the terrain separating the two points may be of such a character as would increase costs of constructing the proposed extension out of proportion to revenue to be anticipated; or the intervening territory may be so thinly populated that the company could not reasonably anticipate the addition to its system of any load other than in the town of eventual terminus, and the load there to be attached might not be sufficient by itself to warrant the extension. In either case such community could hardly be regarded as being located within the "market" of the company.

On the other hand, a community might conceivably be immediately adjacent to territory now being served by a natural gas company but might not properly be considered as within the market which it serves or is capable of serving. This might result from inadequate supplies of natural gas; from insufficient capacity of its pipe lines; from inadequacy of financial resources to permit the company to furnish proper service to an additional community or from any other factor which might result either in imposing an "undue burden" on the existing company or impairing its ability to render adequate service to its present customers.

In this connection it may be said that while we do not believe that the plans, intentions, or purposes of an existing natural gas company with regard to a new area or territory, as evidenced by surveys or studies of such area, is by itself decisive of an assertion by the existing company that the area so surveyed or studied is included within its market, it is clear that such actions are at least evidence of the existing company's regard of that new area as being located within its market.

We have dwelt at length upon these considerations which affect the inter-

pretation of § 7 of the Natural Gas Act not only because of their importance in the instant case, but also because of their bearing on applications for certificates of convenience and necessity which may be filed hereafter.

(a) Kansas Pipe Line & Gas Company

The record before us shows that the Kansas Company, a Kansas corporation authorized to do business in the state of Nebraska, presently owns and operates natural gas pipe lines extending from the Rush county gas field in the state of Kansas into the state of Nebraska, and at present transports natural gas in interstate commerce from Kansas to Nebraska. Along the route of its pipe lines, which total approximately 625 miles in length, the Kansas Company sells gas at wholesale or retail in 53 communities, 17 of which are in Kansas, and the remainder in Nebraska.

The route of the facilities proposed to be constructed by the Kansas Company has already been outlined. Several of the communities which the Kansas Company proposes to serve in Nebraska, South Dakota, and Minnesota lie near existing termini or sales points along the existing facilities of the Northern Natural Gas Company. There are no physical connections for the transportation of natural gas to or the sale of natural gas in any of the communities proposed to be served by the Kansas Company. The Northern Natural Gas Company has surveyed or made studies of the possibility or desirability of extending its facilities to several of the towns proposed to be served by the Kansas Company. As to those towns in Nebraska, South Dakota, and Minnesota which applicant proposes to serve, and which are either near termini of the Northern Natural's present facilities or were the subject of study by that company for possible extension, it would appear that in the light of Northern Natural's present available source of supply, its access to financial resources, the character and quantity of the load available in those communities, the effect that such extensions would have on the existing facilities of the company, those towns may properly be said to be within a market presently served by the Northern Natural Gas Company.

The Kansas Company proposes to build a branch line from a point in Stevens county, Minnesota, northward to transport natural gas to, among others, the towns of Moorhead, Crookston, and East Grand Forks, located in western Minnesota, and Fargo and Grand Forks, located in eastern North Dakota.

The Montana-Dakota Utilities Company presently owns and operates a natural gas pipe line which transports natural gas from the Baker-Glendive gas field located in southeastern Montana eastward to Bismarck, North Dakota. This line was constructed under the authority of a certificate issued July 10, 1928, by the North Dakota Railroad Commission to the Montana-Dakota Power Company, a predecessor company of the Montana-Dakota Utilities Company. The certificate was assigned to the Montana-Dakota Utilities Company.

The original certificate—or series of certificates—issued by the North Dakota Commission authorized the construction of a natural gas pipe line from Beach, North Dakota (on the Montana-North Dakota state line), to

Fargo, North Dakota (on the North Dakota-Minnesota state line). However, the line was built only as far as Mandan and Bismarck, North Dakota, and the certificate for the additional construction east to Fargo, North Dakota, was allowed to lapse on its expiration in 1930. It appears that the depression occurring in those years and the consequent dislocation of economic conditions throughout the country, as well as in this area, substantially influenced the abandonment of that portion of the construction lying east of Mandan and Bismarck, which the certificates issued by the North Dakota Commission authorized.

The Montana-Dakota Utilities Company has repeatedly surveyed the area represented by the five towns in North Dakota and Minnesota which the Kansas Company proposes to serve, and at one time in the recent past attempted unsuccessfully to secure the finances necessary to construct a project designed to transport natural gas to those towns from its present terminus at Mandan and Bismarck. The supply of natural gas available to the Montana-Dakota Utilities Company is ample to provide for service in those towns should they be attached. The present Montana-Dakota Utilities Company line from the Montana gas fields to Mandan, North Dakota, is built and designed to operate under 500 pounds pressure and is at present actually operated at 150 pounds pressure. The line is not presently used to capacity and possesses sufficient capacity to serve the area lying east of Bismarck and Mandan. From the present terminus of the Montana-Dakota Utilities line at Bismarck to Fargo, North Dakota, there are other communities which would naturally be served by such a pipe line as the company originally contemplated constructing.

It is true that none of these five controverted towns presently enjoys natural gas service. As has been indicated, the phrase "market in which natural gas is already being served by another natural gas company" cannot reasonably be interpreted as meaning only those communities in which there are presently existing physical facilities for the service of natural gas. Rather the phrase "market in which natural gas is already being served by another natural gas company" lends itself readily to a meaning which has regard for those many and varied factors we have discussed heretofore, all of which are to be viewed in the light of the facts and circumstances of each particular case as it arises.

In the light of the foregoing we find that the Kansas Pipe Line & Gas Company is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale, and is a natural gas company within the meaning of the Natural Gas Act; that the Kansas Pipe Line & Gas Company proposes to undertake the construction or extension of facilities for the transportation of natural gas to a market or markets in which natural gas is already being served by another natural gas company or natural gas companies. Accordingly, the jurisdiction of the Commission under § 7(c) of the Natural Gas Act attaches to the construction or extension of facilities proposed by the Kansas Pipe Line & Gas Company.

(b) North Dakota Consumers Gas Company

The route of the facilities proposed to be constructed by this applicant has already been discussed. The North Dakota Company proposes to serve natural gas to the same five cities and towns in eastern North Dakota and western Minnesota as are contemplated to be served by the Kansas Company. We have concluded that the proposed construction of facilities by the Kansas Company to serve those five communities constituted a proposed construction or extension of facilities to a market in which natural gas is already being served by another natural gas company. For the same reasons we feel that the construction or extension of facilities for the transportation of natural gas to these five towns by the North Dakota Company constitutes a proposed construction or extension of facilities to a market in which natural gas is already being served by a natural gas company. The fact that the North Dakota Company will buy its natural gas from the Montana-Dakota Utilities Company at Mandan, North Dakota, and will build a line which, for all intents and purposes, is identical with the line originally contemplated by the Montana-Dakota Utlities Company in 1928 (at least so far as construction and service east from Mandan to Fargo is concerned) serves to substantiate our conclusion.

The North Dakota Consumers Gas Company is a natural gas company within the meaning of the Natural Gas Act. The company was organized on December 9, 1938, to acquire, own, and operate natural gas pipe lines and distribution systems for the sale of natural gas at wholesale and retail, to produce and purchase natural gas and to engage in certain other matters incident to the carrying on of a natural gas public utility business. The company does not at present own or operate any facilities for the transportation or sale of natural gas although it does hold a contract with the Montana-Dakota Utilities Company for the purchase of natural gas from the latter company at Mandan, North Dakota, which natural gas the Montana-Dakota Utilities Company produces in Montana and transports to Mandan, North Dakota.

Section 7(c) of the Natural Gas Act not only inhibits *construction* of facilities by a natural gas company to a market already served except under a certificate issued by the Commission, but also inhibits the *engaging in transportation* by a natural gas company by means of any new or additional facilities, or the *selling of natural gas* by a natural gas company in a market already served, except under a certificate granted by the Commission. It is obvious that the congressional intent was to prohibit construction *and use* of proposed new facilities which would enter a market already served by a natural gas company except under a certificate granted by the Commission.

Accordingly, with regard to the North Dakota Consumers Gas Company, we find that the said company is authorized by charter to construct the facilities for which a certificate is sought; that it is a natural gas company within the meaning of the Natural Gas Act; that the construction and operation of the facilities proposed

to be undertaken by the North Dakota Company will be for the transportation of natural gas to, and the sale of natural gas in, a market in which natural gas is already being served by another natural gas company. Accordingly, the jurisdiction of the Commission under § 7(c) of the Natural Gas Act attaches to the construction and proposed use of the facilities contemplated by the North Dakota Company.

The Sources of Supply Available to the Applicants

[3] We are of the opinion that applicants who contend that "public convenience and necessity" requires or will require the construction of facilities for the transportation of natural gas must show that they possess a supply of natural gas adequate to meet those demands which it is reasonable to assume will be made upon them. It is obvious that the public convenience and necessity would not be served by certificating an applicant who had an insufficient supply of the product which it proposes to make available to the public. Cf. Incorporators of Service Gas Co. v. Public Service Commission (1937) 126 Pa. Super. Ct. 381, 190 Atl. 653.

(a) Kansas Pipe Line & Gas Company

The Kansas Company proposes to secure its supply of natural gas from the Hugoton gas field located for its major part in the southwestern corner of the state of Kansas. This field which lies almost directly north of the Texas Panhandle field is extremely large, being approximately 125 miles in length and averaging 35 miles in width. Competent evidence has been adduced to the effect that the field has over 2,000,000 acres of proven acreage of which 1,600,000 are located in Kansas.

Using recognized methods of determining gas reserves, competent witnesses have estimated the original natural gas reserves in place, less an abandonment pressure of 25 pounds gauge at the well head, at approximately 7,893,500 cubic feet per acre, or a total reserve of available gas for the entire field of more than 17 trillion cubic feet.

The Kansas Company proposes to secure its supply of natural gas from the Hugoton field through the medium of the firm of Hagy, Harrington, and Marsh, a copartnership which owns gas lands, leases, and wells and produces natural gas in the Hugoton and other fields. There is evidence to the effect that this copartnership owns approximately 302,000 acres of proven gas lands in the Hugoton fields and the Texas-Oklahoma Panhandle.

Though there is not at present a firm contract in existence between the Kansas Company and Hagy, Harrington, and Marsh for the sale and purchase of natural gas, the terms of that contract have been agreed upon between the parties. The proposed contract will be between the applicant as buyer and the Texokan Corporation as seller with performance thereof by the latter fully guaranteed by the partnership of Hagy, Harrington, and Marsh as producers. Though the Texokan Corporation has not as yet been formed, it is contemplated that that corporation will be formed to act as an operating company and seller in connection with this contract if the demand therefor arises. The seller

and producer will guarantee that during the term of the contract in excess of 160,000 acres of proven acreage in the field will be dedicated to the needs of the Kansas Company. The contract will continue in force until January 1, 1960. The Kansas Company will pay 4 cents per thousand cubic feet as the price for gas at the mouth of the well and an additional ½ cent per thousand cubic feet for transportation and delivery of gas by the seller to a delivery point specified in the proposed contract. There is competent, uncontradicted evidence in the record to the effect that the natural gas reserves underlying this acreage total some 1,280 billion cubic feet. This appears from the evidence of record to be more than ample to provide the Kansas Company with a supply of natural gas which will serve its demands within the market now under consideration for approximately fifty years.

[4] Conceding that there is an ample reserve of natural gas available to the Kansas Company, we are not unmindful of the fact that as yet no firm commitment between the owners or potential producers of that reserve and the Kansas Company is in existence which would specifically dedicate that reserve to the Kansas Company. We could not issue an unconditional certificate of public convenience and necessity nor authorize the issuance of such an unconditional certificate until we had received assurance in the form of a contract satisfactory to us that the reserve of natural gas purportedly available to the Kansas Company is actually available upon firm commitment.

With regard to this matter of the reserves of natural gas of the Kansas Pipe Line & Gas Company, we find therefore: that the Kansas Company intends to procure its supply of natural gas from the Hugoton gas field located in southwestern Kansas; that the copartnership of Hagy, Harrington, and Marsh have under lease approximately 302,000 acres of proven natural gas lands in the Hugoton field; that Hagy, Harrington, and Marsh, the Texokan Corporation (to be organized and whose activities will be guaranteed by Hagy, Harrington, and Marsh), the Kansas Pipe Line & Gas Company and Stanley Marsh, Jr., propose to execute a contract whereby there will be dedicated to the Kansas Pipe Line & Gas Company approximately 160,000 acres of gas lands now held in trust by Stanley Marsh, Jr., for Hagy, Harrington, and Marsh; that the reserves of natural gas underlying the aforementioned 160,000 acres approximate 1,280,000,000,000 cubic feet of natural gas; that if such reserve of natural gas were available to the Kansas Pipe Line & Gas Company, it would adequately meet the reasonably-to-be-anticipated needs of the Kansas Pipe Line & Gas Company for a period approximating fifty years; that it is essential that a firm contract committing such reserve to the exclusive use of the Kansas Pipe Line & Gas Company be presented to this Commission for its further consideration and approval before any certificate of public convenience and necessity could issue to the Kansas Pipe Line & Gas Company and before we could ultimately find that the present or future public convenience and necessity requires or will require the construction and operation of the proposed facilities.

(b) The North Dakota Consumers Gas Company

The North Dakota Company intends to secure its supply of natural gas by purchase from the Montana-Dakota Utilities Company at a point of connection between the pipe lines of the two companies located near Mandan, North Dakota, the point of origination of the North Dakota Company's proposed line. Purchase is to be made under a contract executed by the parties on December 24, 1938.

Under the terms of this contract the parties agree that the entire demand of the North Dakota Company will be furnished by the Montana-Dakota Utilities Company. The North Dakota Company will pay 14 cents per thousand cubic feet for gas purchased under the contract until January 1, 1944, and so long thereafter as gas is supplied from the so-called Cedar Creek Anticline or Baker field located in Montana. If the Montana-Dakota Utilities Company determines that it is necessary to construct a line to the Bowdoin gas field and such line is constructed, the price for gas at Mandan will thereafter increase to a rate of 16 cents per thousand cubic feet. Under the terms of the contract the North Dakota Company is given the option of making tender of 50 per cent of the monthly purchase price due for gas used under the contract in the form of certificates of indebtedness bearing dates of their issue and payable on or before January 1, 1959, the certificates to bear 5 per cent interest per annum. The North Dakota Company is to execute to the Montana-Dakota Utilities Company a good and valid mortgage to secure payment of said certificates and such lien is to be considered junior only to whatever obligations applicant may incur in securing funds to cover the cost of building its proposed facilities. The maximum amount of indebtedness to be secured by this mortgage and for this purpose is $2,800,000. Pursuant to this contract the North Dakota Company agrees that all salaries and remunerations of its officers and directors shall be fixed in an amount satisfactory to the Montana-Dakota Utilities Company and that the North Dakota Company will not directly or indirectly declare or pay any dividends upon any class of its capital stock without the approval of the Montana-Dakota Utilities Company. Unless this contract terminates on July 15, 1940, by reason of the failure of the North Dakota Company to begin construction of its proposed facilities, the contract is to be in force and effect until July 1, 1959.

The sources of gas available to the Montana-Dakota Utilities Company from which they will meet the demands of the North Dakota Company are in the so-called Baker and Bowdoin fields, located primarily in the state of Montana.

The Baker field, the immediate source of supply, has a designated productive area of approximately 134,000 acres. Of the 135 wells presently in the field 94 are owned by the Montana-Dakota Utilities Company. The field is presently unitized and the unit operator is the Montana-Dakota Company. That company owns or controls by lease approximately 100,000 acres of the 133,112 acres contained in the unit operating plan. Competent

witnesses using accepted methods of test have estimated the present reserves of natural gas available in the Baker field at 267,000,000,000 cubic feet of natural gas.

The Bowdoin field to which the Montana-Dakota Utilities Company plans to connect its present facilities leading into Bismarck or Mandan, North Dakota, is located in northeastern Montana and comprises some 210,041 acres of productive area. The company controls some 61,000 acres in this field. Again competent witnesses using accepted methods of test have estimated the present reserves of the Bowdoin field at 336,364,000,000 cubic feet, There is evidence to the effect that there is no waste in either of the two fields. Though the Bowdoin field is not unitized at the present time, it is planned to unitize the field before the expiration of 1939. Considering known and ascertainable withdrawals, the reserves of natural gas in the two fields as of January 1, 1939, total between 602,000,000,000 to 605,000,000,000 cubic feet of natural gas.

Having regard for current withdrawals from the Baker field alone, it would appear that even with the addition to those current withdrawals of the demands of the North Dakota Company the natural gas reserves of this field would supply the applicant's demands for a period of approximately twenty years. If the reserves of the Bowdoin field also become available to the North Dakota Company, it would appear that the combined reserves of the two fields would satisfy applicant's demands for a period in excess of forty years.

Reverting to the purchase contract between the applicant and the Montana-Dakota Utilities Company, we note the provision therein for an automatic increase in the price of gas to be paid by the North Dakota Company if the Montana-Dakota Utilities Company constructs the proposed extension to the Bowdoin field. There is nothing in the record to bear out the reasonableness of this automatic increase. We do not know if the proposed extension will be solely for the use of the applicant, nor do we know whether if that is true the proposed increase in price bears any reasonable relation to the cost of constructing or operating that extension. For all that is apparent in the record, that extension may serve other demands upon the system of the Montana-Dakota Utilities Company than those of the North Dakota Company, but the cost thereof is to be paid solely by the North Dakota Company. Attention is directed to the fact that the proposed increase in rate is subject to our jurisdiction under applicable provisions of the Natural Gas Act. Applicant and the Montana-Dakota Utilities Company must take appropriate steps in the future to secure our approval of that increase if and when it is sought to put same into effect, and nothing we have said herein is to be construed in any manner as approval of this increase or of the present rate (14 cents per thousand cubic feet) set forth in that contract.

Accordingly, with regard to the reserves of natural gas available to the North Dakota Consumers Gas Company, we find: that the North Dakota Consumers Gas Company intends to secure its supply of natural gas by pur-

chase from the Montana-Dakota Utilities Company at or near Mandan, North Dakota, pursuant to the terms of a contract entered into between the parties on December 24, 1938; that the Montana-Dakota Utilities Company will secure natural gas for delivery under that contract from the Baker and Bowdoin gas fields located principally in the state of Montana; that the total reserves of natural gas presently in those two fields are about 600,000,000,000 cubic feet of natural gas, that the Baker field is unitized and that the unit operator thereof is the Montana-Dakota Utilities Company; that the Montana-Dakota Utilities Company plans an extension from its main line at Mandan, North Dakota, to and connecting with the Bowdoin field; that the reserves of natural gas available in the Baker field would serve the reasonably-to-be-anticipated needs of the applicant for a period in excess of twenty years and that if the reserves of natural gas in both fields were available to the applicant, those reserves would serve applicant satisfactorily for a period in excess of forty years; that nothing contained herein shall be construed as approval by us of that feature of the purchase contract of December 24, 1938, between the North Dakota Consumers Gas Company and the Montana-Dakota Utilities Company which provides for the automatic increase in the price to be paid thereunder for natural gas; that nothing contained herein shall be construed as approval of the present price to be paid for natural gas by the North Dakota Consumers Gas Company under the terms of the purchase contract of December 24, 1938.

Potential Customers

We believe that applicants who contend that public convenience and necessity require or will require the construction and operation of facilities for the transportation and sale of natural gas should show, among other things, that there exist in the territory proposed to be served customers who can reasonably be expected to use such natural gas service.

In the instant proceedings neither applicant has submitted to us any firm contract providing for the sale of natural gas by it. We do not think that this fact forecloses our consideration of the subject of whether there are proposed customers who may reasonably be expected to be served by the applicants. It is the testimony of witnesses who are men of long experience in the operation of the natural gas business that it is not the practice in that industry when contemplating an extension into a territory where there are no physical connections for the sale of natural gas to attempt to secure firm commitments from prospective customers. The line is started or laid and customers are then attached. We see no reason to require applicants before us to submit firm commitments for the sale of natural gas in all cases; it is, we feel, enough if applicants show that, on the basis of experience in similar territory, there are reasonable grounds for anticipating that customers will be attached to the proposed facilities. This approach, we feel, has regard for the practical experience of the natural gas industry and does not jeopardize the public interest.

In the instant cases applicants propose to sell natural gas along the route

of their proposed facilities to distribution companies for resale for domestic, commercial, industrial, and other uses. Applicants intend to sell directly from their proposed facilities to industrial customers, and the North Dakota Company also anticipates that it will directly engage in the distribution of natural gas to other consumers in certain communities along its proposed route. The Kansas Company anticipates that it will sell natural gas on the Mesabi and Cuyuna ranges in Minnesota for use in the beneficiation of iron ore and for use in the extraction of high-grade manganese from manganiferous ores.

As regards potential domestic and commercial customers who may attach to the proposed facilities either directly or indirectly, both applicants have predicated their estimates on the basis of an approximate potential attachment at the end of the fifth year of operations of one in every five persons of population along the proposed routes. The population in the area to be traversed by the proposed facilities of the Kansas Company is estimated at approximately 370,106 persons. That of the area proposed to be reached by the North Dakota Company is estimated at approximately 87,439 persons. The Kansas Company estimates that at the end of its fifth year of operations it will have attached approximately 85 per cent of the total potential saturation. The North Dakota Company estimates that at the end of its fifth year of operations it will have attached approximately 80 per cent of the total potential saturation.

With regard to industrial consumers to be served directly or indirectly by the applicants, their estimates do not appear to be unreasonable, and in the case of the Kansas Company make little or no allowance for the sale of natural gas for use in the new processes contemplated on the Mesabi and Cuyuna ranges.

For the present we are concerned only with the reasonableness of the applicants' estimates. The testimony shows that these estimates were based upon reasonably careful study of the conditions and circumstances existing in the towns proposed to be served. Allowances have been made for the existence of manufactured gas plants in certain of the communities. Comparisons and studies of the existing lines of other natural gas companies operating in territory, areas, or communities reasonably comparable to that proposed to be served by the applicants have been made. Accepted principles of operations in the natural gas industry have been observed.

Estimated Sales and the Physical Characteristics of the Facilities Proposed.

[5] We believe that applicants must show that the facilities for which they seek a certificate are adequate to render a full and complete public service in the territory proposed to be served. If applicants propose to transport natural gas to areas in which there are no present physical facilities for the transportation and sale of natural gas, it is only reasonable to demand that applicants show that the facilities which they propose to construct are capable of meeting the demands for natural gas which it is reasonable to expect will arise. Since in the instant proceedings we are dealing not with actual experience but with a rea-

sonably-to-be-expected experience, we must again consider the *estimated* demand for natural gas—the *estimated* sales of natural gas—and against that factor appraise the capacity and physical character of the facilities the applicants propose to construct.

(a) North Dakota Consumers Gas Company

The North Dakota Company estimates that at the end of the fifth year of operations it will have approximately 14,000 domestic and commercial customers attached to its system. The North Dakota Company estimates that at the end of the fifth year of operations the average annual consumption per meter per average domestic and commercial consumer will be 250,000 cubic feet. Accordingly, the North Dakota Company estimates that its annual gross sales of natural gas for domestic and commercial purposes will be 3,500,000,000 cubic feet. The applicant estimates that at the same period its annual industrial sales will average 1,400,000,000 cubic feet and that its special class of sales known as "state sales" will average around 400,000,000 cubic feet annually. The total estimated annual sales of the company at the end of the fifth year of operations will approximate 5,300,000,000 cubic feet.

In making this estimate the applicant has relied substantially upon the experience of the Montana-Dakota Utilities Company in connection with its operations in territory appearing reasonably comparable to that proposed to be served by the applicant and upon studies of this prospective territory made by the Montana-Dakota Utilities Company. The primary territory proposed to be served by the applicant company lies in the so-called Red River valley of North Dakota and Minnesota. Economic conditions in that area are generally better than those in the territory in western North Dakota presently served by the Montana-Dakota Utilities Company, although in many other respects they are comparable. Though the 250,000 cubic feet per customer consumption estimated by the applicant is higher than the consumption per customer actually experienced by the Montana-Dakota Company over its present facilities, the difference in economic conditions in territory served would appear to justify the higher estimate of applicant. We feel that the methods used by the applicant in making its estimate of sales and demand have been reasonable and that the applicant may reasonably expect to experience the results estimated by it.

The North Dakota Company proposes to construct a 12-inch line from its point of connection with the system of the Montana-Dakota Utilities Company at Mandan to Fargo, North Dakota. From Fargo to Grand Forks, North Dakota, the proposed line will be a 10-inch line and the extension from Grand Forks to Crookston, Minnesota, will be a 6-inch line. The applicant proposes to construct the line so that it can be operated up to 500 pounds pressure.

Assuming that the demand upon these facilities at the end of the fifth year of operation is to be as estimated by the applicant, competent witnesses using recognized methods of calculating pipe-line capacities have testified that the capacity of the proposed facilities in all divisions is adequate to meet

the anticipated demand. This testimony is not controverted. There is evidence to the effect that the present facilities of the Montana-Dakota Utilities Company, originally constructed with a view to extension to the territory sought to be served by the applicant are equipped to operate under 500 pounds pressure, but that they are actually presently operating under only 150 pounds pressure and that these facilities have the capacity to meet the additional demands to be placed upon them by the anticipated attachment of the North Dakota Company. This testimony also is uncontroverted.

Accordingly, with regard to this matter we find that: the North Dakota Consumers Gas Company has estimated that at the end of its fifth year of operations it will sell approximately 5,400,000,000 cubic feet of gas for all purposes; that this estimate was arrived at by the use of reasonable methods; that the capacity of the facilities proposed to be constructed by the North Dakota Consumers Gas Company will be adequate to meet reasonably-to-be-anticipated demands.

(b) Kansas Pipe Line and Gas Company

During the course of the hearing on this application no matter was more thoroughly inquired into than the matter of the capacity of the facilities proposed by the Kansas Company to meet the demands which it was reasonable to anticipate would be made upon it. Applicant has estimated that it will have sales in excess of 20,000,000,000 cubic feet a year at the end of the fifth year of operations.

We believe that this estimate is conservative and for consideration of the matter here involved may justifiably be increased. Applicant has estimated annual industrial sales on the Mesabi and Cuyuna ranges at approximately 1,800,000,000 cubic feet of natural gas at the end of the fifth year of operations. This figure or estimate is predicated only upon the amount of boiler fuel now used on the iron ranges. This estimate makes no substantial allowance for the utilization of natural gas in either the beneficiation of iron ore or the manganese recovery process. Yet the record shows that the moving parties behind applicant's proposal—persons of long experience with the magnetic roasting process and persons who will be vitally interested in this project financially and from the standpoint of the utilization of natural gas in the magnetic roasting process—are of the firm belief that natural gas can be economically and feasibly utilized in that process.

Further it would appear that applicant's estimates of domestic sales is below that which can reasonably be anticipated. This results from applicant's low estimate for potential house-heating customers. Whereas applicant estimates those customers will be from 30 to 40 per cent of the potential number of domestic customers for the entire system, such an estimate is not in accord with the actual experience of operating natural gas companies serving in areas which can reasonably be compared to that proposed to be served by the applicant. Using the experience of other companies similarly situated as a guide, applicant's estimate for this type of service could be increased from an estimate of 30 to 40

per cent to 50 per cent of the potential domestic customers. Using applicant's own estimates of the total number of potential domestic customers and applicant's estimated consumption per customer per meter for house-heating purposes the increase to 50 per cent saturation of the total potential saturation would amount in an increase in estimated sales for domestic purposes of 686,355,000 cubic feet for the fifth year's operations. Applicant has not reflected in its estimate of sale the attachment of business in small towns along its route, yet it has been testified that attachment in that character of town is relatively substantial.

There are conflicting estimates of the capacity of the facilities as presently designed. From a review of the evidence presented and having regard to the qualifications of the witnesses testifying and the methods employed by them in estimating the capacity of these facilities, it would appear that the capacity of a 16-inch line with compressor stations spaced 100 miles apart operating at a 300-pound inlet pressure and an outlet pressure of 800 pounds—and these are the plans presented by applicant—is approximately 94,000,000 cubic feet a day. It should be noted that this estimate of capacity at 94,000,000 cubic feet per day is an estimate of a witness presented by the Montana-Dakota Utilities Company, the intervener opposing the granting of the application of the Kansas Company.

However, it is upon the question of the peak-day demand per customer that the greatest controversy arises. This estimated demand averages from 1,000 cubic feet per customer to 2,800 cubic feet per customer. It is regretted that the record does not contain a more thorough study of the question of estimated peak-day demand for applicant's proposed system. The estimate of 1,000 cubic feet per customer appears too low when we compare this figure to the known experience of other natural gas companies operating in territory comparable to that proposed to be served by the Kansas Company. The record discloses that the estimate of 2,800 cubic feet per customer was arrived at by a comparison of the territory proposed to be served by the applicant with a territory where such a demand was experienced. But the record also discloses that economic conditions between the two territories were so diverse as to make it unreasonable to ascribe to customers in the proposed territory a peak-day demand experienced by customers in the known economically prosperous region.

A witness for the applicant who is well qualified has estimated the peak-day demand per customer at approximately 1,333 cubic feet. This figure appears to us to be the minimum which can be adopted. It is a figure arrived at as a result of past experience on lines comparable to that proposed to be operated by the Kansas Company in territory that may reasonably be compared. Adoption of this figure would give a peak-day demand of 96,746,000 cubic feet. This we feel is the minimum figure that can be used.

Applicant has attempted to resolve the apparent lack of capacity of its facilities by urging before us that the peak-day demand may be controlled in actual operation by three possible methods. The first is to increase the operating pressure on the line to 1,000 pounds and thus increase capacity to

100,000,000 to 120,000,000 cubic feet per day depending on the horsepower used. But applicant was unable to buttress this purely hypothetical pressure increase with evidence of the successful practical operations of such high pressures. Experimentation with such high pressures is presently being conducted on a small line some 90 miles in length in West Virginia but beyond this isolated experimental case no evidence of successful operation at such pressures has been presented. We do not believe applicant has made adequate showing of the practicability of this method.

Applicant also suggests that it can control its maximum peak-day demand by attaching large commercial and industrial customers on an interruptible basis. With the exception of the potential load to be attached on the iron ore ranges, applicant probably will not attach any really large industrial users. Applicant's greatest load will apparently come from a class of customers who experience has proven cannot be attached on an interruptible basis. It is doubtful, in view of these facts which are amply supported by evidence in the record, whether this method of controlling peaks is feasible.

Finally applicant suggests that it will be able to control its maximum peak-day demands by the maintenance of existing manufactured gas plants by distribution companies for use on days of high demand for purposes of knocking off the peak. While we do not reject the general theory proposed by applicant, no evidence has been submitted showing the willingness of distribution companies to agree to this retention and we are constrained to conclude that there are serious doubts as to the validity of this proposal.

It would appear then that applicant's system cannot be found to possess a capacity sufficient to meet the estimated peak-day demand which can reasonably be said to be anticipated. This conclusion, however, is predicated upon the proposed construction of a system to serve the entire area or territory proposed by applicant, including the five towns in eastern North Dakota and western Minnesota proposed to be served by the North Dakota Consumers Gas Company and certain other towns on applicant's proposed branch line extending northwest from a point in Stevens county, Minnesota (Fergus Falls and Breckenridge, Minnesota, and Wahpeton, North Dakota).

While the record does not affirmatively show the maximum peak daily demand to be anticipated in those towns, the record does disclose facts with regard to the estimated annual sales to be anticipated in that territory, the number of potential customers therein, the nature and estimated extent of their demands, and the character of the territory from the standpoint of utilization of or demand for natural gas. In the light of these factors, it would appear reasonable to conclude that if the maximum peak-day demand of the area discussed above were to be deducted from the already ascertained minimum capacity requirement of 96,746,000 cubic feet per day which must be met by the Kansas Company if it is to serve the entire territory proposed by it, the remaining maximum day demand of the territory remaining to be served by the Kansas Company would be well with-

in the 94,000,000 cubic feet capacity of the facilities proposed to be constructed by the Kansas Company.

Accordingly, we find that: the capacity of the facilities proposed to be constructed by the Kansas Pipe Line & Gas Company is a maximum of approximately 94,000,000 cubic feet per day the estimated peak-day demand to be reasonably anticipated by the Kansas Pipe Line & Gas Company for the entire territory which it proposes to serve is a minimum of approximately 96,746,000 cubic feet per day; the facilities proposed to be constructed by the Kansas Pipe Line & Gas Company are not adequate to meet that maximum peak daily demand which it is reasonable to anticipate will arise throughout the entire territory proposed to be served; if service to the towns of Fergus Falls, Breckenridge, Moorhead, Crookston, and East Grand Forks, Minnesota, and Wahpeton, Fargo, and Grand Forks, North Dakota, is eliminated from the proposal of the Kansas Pipe Line & Gas Company, the capacity of the remaining facilities proposed to be constructed by said company will be adequate to meet the reasonably-to-be-anticipated demands in that remaining territory which the applicant proposes to serve.

Financing of the Proposed Projects

[6–8] We believe that applicants for certificates of convenience and necessity should show that they possess adequate financial resources with which to construct the facilities for which certificates are sought. Other regulatory Commissions have denied applications for certificates where the applicants have been unable to show adequate financial resources. Re Niagara River & E. R. Co. (N. Y. 1916 P.U.R.1917A, 278; Re Buffalo Jitney Owners Asso. (N. Y.) P.U.R 1923C, 645; Re Wyoming-Montana Pipe Line Co. (Wyo. 1930) P.U.R 1931B, 63; see also Re Carver (Colo 1922) P.U.R.1923B, 242. When we consider that one effect of the issuance of a certificate to construct and operate facilities to and in a given area is to preclude from that territory other construction or operation except under a certificate issued by us, the necessity that the present applicants be financially able to consummate their proposed construction becomes the more apparent.

In the instant proceedings the applicants have stated that they intend to rely for their finances entirely upon the successful disposition of applications each has filed with the Reconstruction Finance Corporation. Witnesses for both applicants have testified that for projects of the magnitude of those here under consideration the ordinary financial channels are closed; that the sale of securities to the general public in customary fashion is impossible for this type of project. We pass no comment upon this latter contention other than to note that neither applicant appears to have seriously made any attempt to finance through such channels.

Neither applicant has submitted any firm commitment from the Reconstruction Finance Corporation that that organization will loan applicants the necessary funds. The record is silent upon the subject of the terms, conditions, type of security, method of repayment, amount, and other details of any financing program. Under these circumstances we could justifi-

bly deny the applications before us; certainly we cannot authorize the issuance of unconditional certificates or, without assurance on this vital point, make a finding that the present or future public convenience and necessity requires or will require the construction and operation of the proposed facilities.

However, we have been informed from the beginning that applicants intended to finance through the Reconstruction Finance Corporation and there is evidence in the record to the effect that that body had informed the applicants that action on their pending applications for loans would be held in abeyance until applicants had presented their applications for certificates to this Commission. Under these circumstances we do not feel it expedient presently to deny and dismiss the applications forthwith solely for lack of proper financial support.

We have no desire to foreclose the consideration of these matters by the Reconstruction Finance Corporation. We realize that the standards by which applications are judged by the two agencies may vary and the matters on which we place emphasis may not be the same which the Reconstruction Finance Corporation considers important.

Accordingly with regard to this matter we find that: neither applicant has made a satisfactory showing that it possesses the requisite financial ability to construct the facilities for which certificates are sought; applicants must, therefore, make further showing satisfactory to us that they have secured adequate finances with which to prosecute the proposed undertakings before we can finally dispose of the pending applications.

Proposed Construction Costs, Operating Costs, Proposed Rates, and Revenues

Estimated Construction Costs of the Two Projects

[9] We believe that applicants for certificates of convenience and necessity should show that the costs of construction of the facilities which they propose are both adequate and reasonable. Public convenience and necessity would not be served by the certification of a project where the estimate of construction cost, or the funds allotted for that purpose, were insufficient to carry the project through to completion. So too we consider the duties imposed upon us under other sections of the Natural Gas Act to prescribe reasonable and lawful rates, and realizing that under any accepted theory of rate making and rate regulation, rates should be designed to reflect costs, we conclude that the original cost of construction—an item which will be reflected in the rate bases of the applicants for rate-making purposes—must be a reasonable cost and expenditure.

The Kansas Company has estimated that the total ultimate cost of constructing the transportation facilities proposed by it will amount to $21,470,000. This figure represents the proposed main and tap lines, compressor stations, valves, crossings, dehydrator, measuring and meter stations, a limited degree of pipe protection, rights of way, damages to crops and timber, engineering supervision and legal expenses, etc. Gathering

lines in the gas field are to be constructed by the producers therein. The record bears conflicting testimony with regard to the adequacy of this estimate. However, upon consideration of all the evidence and testimony bearing upon this matter it would appear that as of the date this estimate was made, presented to and discussed before us it is an adequate and reasonable estimate of the cost of constructing the entire transportation facilities for which the Kansas Pipe Line & Gas Company seeks a certificate.

The total estimated costs for the facilities proposed to be constructed by the North Dakota Company is $4,254,300. This figure represents the estimated costs of substantially the same items as were recited above in connection with the Kansas Company's estimate, and in addition includes an estimated $524,000 as the cost of distribution systems which applicant intends to construct if and where needed. Upon a review of the testimony and evidence in the record it would appear that as of the date this estimate was made, presented to and discussed before us, it is an adequate and reasonable estimate of the cost of constructing the facilities for which the North Dakota Consumers Gas Company seeks a certificate.

If certificates are ultimately issued to either or both of these applicants and if construction of the proposed facilities by either or both of these applicants if finally consummated, we find that the public interest will be served by having either or both applicants file with us a sworn statement of the actual original cost of construction of the facilities so constructed in such detail as may be required. We wish to make expressly clear that nothing we have found or will find in this opinion shall be construed as an acquiescence by us in the determination of cost or valuation of the proposed facilities as may be claimed by either or both applicants.

Estimated Operating Expenses and Fixed Charges

There is no substantial conflict in the record with regard to the reasonableness of those operating costs which either applicant could reasonably estimate. Since no definite financial program has been presented to us by either applicant we are unable to make any finding with regard to and applicants have made no adequate showing of the reasonableness of anticipated fixed charges or the amount of such fixed charges.

At another portion of this opinion we have indicated that applicants must make further showing before us with regard to the availability or existence of adequate financial resources. At that time also applicants shall present to us for our consideration a study of fixed charges to be met.

Proposed Rates and Revenues

The last sentence of § 7 (c) of the Natural Gas Act imposes a duty upon us with regard to our consideration of the rates proposed to be charged by applicants in the territory they propose to serve. That portion of § 7 (c) provides:

". . . In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevail-

ing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."

We do not believe that the present state of the record is sufficient to enable us to make either the statutory finding or to form a conclusion with regard to the reasonableness of the rates proposed to be charged by the applicants. This is particularly so because of the inadequacy of the showing made by both applicants with regard to the rates proposed to be charged, the comparison of those rates with rates exacted by other natural gas companies whom we have found are serving the territories applicants seek to serve, and the feasibility of those rates to provide essential revenue. The absence of any evidence upon the amount of finances available to the applicants and the terms and conditions upon which such finances may be made available undoubtedly are explanations of the present inadequate state of the record on this matter.

Accordingly, we make no findings with regard to proposed rates or proposed revenues at this time. At such future time as applicants may present to us evidence with regard to their source of finances and the nature, character, and extent of their proposed financial programs, applicants shall then present to us for our consideration proposed schedules of rates to be charged by applicants, comparisons of these proposed rates with rates presently charged by those other natural gas companies whom we have found are already serving the territories sought to be served by applicants, and estimates of revenues to be anticipated under such rates.

Public Convenience and Necessity, the Showing Made

In attempting to resolve the question whether present or future public convenience and necessity requires or will require the construction or operation of proposed facilities for the transportation or sale of natural gas, we have discussed various factors upon which we believe applicants for certificates must make adequate showing before we can act favorably upon their applications. These factors we consider in the nature of minimum requirements upon which applicants must make a favorable showing, for we feel that these minimum requirements must be met if the public convenience and necessity is to be adequately served by the construction or operation of the proposed facilities. In the absence of any statutory definition of the term "public convenience and necessity" we feel that the imposition of these minimum standards is entirely reasonable and consonant with the congressional intent in enacting the Natural Gas Act. Compare Federal Radio Commission v. Nelson Bros. Bond & Mortg. Co. 289 U. S. 266, 77 L. ed. 1166, P.U.R.1933D, 465, 53 S. Ct. 627.

[10–12] We are aware that the term "public convenience and necessity" is not susceptible of precise definition. Judicial decisions interpreting the phrase are in conflict. We believe

that any definition of the term must fundamentally have reference to the facts and circumstances of each given case as it arises. See San Diego & C. Ferry Co. v. Railroad Commission, 210 Cal. 504, P.U.R.1930E, 464, 292 Pac. 640.

We do not view the term as meaning indispensably requisite. Rather we view the term as meaning a public need or benefit without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or comfort or both—without which the public generally in the area involved is denied to its detriment that which is enjoyed by the public of other areas similarly situated. See Chicago, R. I. & P. R. Co. v. State (1927) 126 Okla. 48, P.U.R.1928A, 255, 258 Pac. 874; and Abbott v. Public Utilities Commission, 48 R. I. 196, P.U.R.1927C, 436, 136 Atl. 490. We do not construe the phrase to mean an absolute necessity but rather a reasonable necessity having regard to the convenience of the public in the area involved and its welfare. See Wisconsin Teleph. Co. v. Railroad Commission, 162 Wis. 383, P.U.R. 1916D, 212, 156 N. W. 614, L.R.A. 1916E, 748; Wabash C. & W. R. Co. v. Commerce Commission ex rel. Jefferson S. W. R. Co. (1923) 309 Ill. 412, P.U.R.1924A, 548, 141 N. E. 212. In determining what is the "public" whose convenience and necessity are the subjects of inquiry, we have conceived of that public as the public which exists in the area or territory proposed to be served, not merely the applicants nor those persons or towns who believe they would benefit from the proposed construction. Compare Red Star Transp. Co. v. Red Dot Coach Lines, 220 Ky. 424, P.U.R.1927E, 338, 295 S. W. 419; Choate v. Illinois Commerce Commission (1923) 309 Ill. 248, 141 N. E. 12.

[13] There are no physical facilities for the transportation or sale of natural gas presently existing in any of the specific communities proposed to be served by either applicant. That means that the consuming public in those communities is deprived of the benefits of that natural gas service which is available to the consuming public located in other communities of comparable character. We believe that the inconvenience of being without natural gas service and the benefits accruing to the consuming public generally from natural gas service are too well known to require intensive discussion here. See McFayden v. Public Utilities Consol. Corp. 50 Idaho, 651, P.U.R.1931E, 151, 299 Pac. 671. Congress by enacting § 7 (a) of the Natural Gas Act has unquestionably recognized this fact for it has given this Commission power to compel extensions of natural gas facilities under certain circumstances. We believe that where there is no existing natural gas service the convenience and necessity of the public in that area will be served by the introduction of that service providing that those who seek to render that service can meet certain minimum standards designed to secure such service on a continuous and adequate basis.

[14] We have already noted the fact that for that area lying east of Bismarck, North Dakota, in central and eastern North Dakota, the North Dakota Railroad Commission has at one time issued certificates authoriz-

ng the extension of natural gas service thereto. This fact confirms, for a portion of the territory which we are considering, our conclusion that natural gas service therein will serve the convenience and necessity of the consuming public in that area.

The Kansas Company proposes to make natural gas available on the Minnesota iron ranges for use in the beneficiation of iron ore and in the extraction of high grade manganese from manganiferous ores. There is controverted testimony to the effect that if natural gas is introduced on the iron ranges at 15 cents per thousand cubic feet of gas, the low fuel costs thus assured would make economically feasible the processes above referred to. We do not feel it essential to pass upon this proposition finally at this time. For the Kansas Company does not propose to render an exclusive service to the iron ranges but proposes to render a public service to many communities along its proposed route. It does not appear to us that the proposed public service to be rendered by the Kansas Company will be jeopardized by that company's providing natural gas for use or experimentation in these processes on the iron ranges.

[15] The coal, labor, and railroad interests who have participated in these proceedings have urged that we consider the adverse effects upon their interests of the certification of these proposed pipe lines. We have already noted that § 7 (c) of the Natural Gas Act does not give us unlimited jurisdiction over all proposed construction of facilities for the transportation of natural gas but that our jurisdiction attaches only when the proposed construction is of facilities *for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company.* In the light of that restriction on our jurisdiction and having regard to all other provisions of the Natural Gas Act, it would appear that Congress did not intend this Commission generally to weigh the broad social and economic effects of the use of various fuels. Under § 7 (c) of the act our duty is to safeguard the convenience and necessity of the public as it may be affected by proposed extensions or constructions of facilities for the transportation of natural gas to markets, as herein defined, in which natural gas is already being served by another natural gas company. We see nothing in the legislative history of the Natural Gas Act to alter our conclusions hereon.

In making a final determination of the question whether public convenience and necessity requires or will require the construction and operation of facilities for the transportation or sale of natural gas, we have had regard not only to the reasonable need for natural gas service in the territories proposed to be served, but to the minimum requirements which we have set forth and discussed at length in this opinion.

In the instant proceedings applicants have not made satisfactory showing on all the minimum requirements. We cannot at this time make the required statutory finding that the present or future public convenience and necessity requires or will require the construction and operation of the facilities for which certificates are sought. Applicants must make further

showing on the items indicated before we can finally consider the issuance of the requested certificates.

Disposition of the Applications

As regards the final disposition of these applications we will require further showing by the applicants as follows:

(1) Both applicants must present to us for our further consideration firm commitments for securing the finances necessary to adequately serve the public in their respective territories;

(2) Both applicants must present further evidence bearing upon the matters of operating expenses and fixed charges;

(3) Both applicants must present schedules of proposed rates to be charged by applicants in the territories to be served, evidence bearing upon the reasonableness of such rates, the relation of those rates to prospective revenue, and the relation of those rates to rates presently charged by other natural gas companies operating in the general area or territory affected;

(4) The Kansas Pipe Line & Gas Company must present to us for our further consideration a firm commitment for the purchase of natural gas in the Hugoton gas field in the state of Kansas.

(5) The North Dakota Consumers Gas Company must present to us for our further consideration information, data, and evidence concerning the following:

(a) The nature and extent of the purported "coöperative" character of the applicant;

(b) Plans for the disposition of the common stock of the applicant;

(c) Proposed methods and plans of operation and management;

(d) The exact extent and nature of any control which may be exercised over the North Dakota Consumers Gas Company by the Montana-Dakota Utilities Company or others;

(e) The terms and conditions of any "service or management contracts" which the applicant has executed or proposes to execute with any other person or corporation.

If the further showing made by the applicant, Kansas Pipe Line & Gas Company, on the matters set forth above is satisfactory to us, it is then our intention to authorize the issuance of a certificate of public convenience and necessity to the Kansas Pipe Line & Gas Company to authorize the construction and operation of facilities for the transportation or sale of natural gas as follows:

From a point in the Hugoton gas field located in the state of Kansas through or into the states of Kansas, Nebraska, South Dakota, and Minnesota to a point on the Mesabi Iron range located in the state of Minnesota specifically excluding from such certificate authorization to construct facilities to or operate facilities in the cities of Breckenridge, Fergus Falls, Moorhead, Crookston, and East Grand Forks, Minnesota, and the cities of Grand Forks and Fargo, North Dakota.

If the further showing made by the applicant, North Dakota Consumers Gas Company, on the matters set forth above is satisfactory to us then it is our intention to authorize the issuance of a certificate of public convenience and necessity to the North Dakota Consumers Gas Company to

authorize the construction and operation of facilities for the transportation of natural gas as follows:

From a point connecting with the existing main line of the Montana-Dakota Utilities Company at Mandan, North Dakota, east through Fargo, North Dakota, to Moorhead, Minnesota; southward from Fargo, North Dakota, to Wahpeton, North Dakota, and Breckenridge and Fergus Falls, Minnesota; northward from Fargo, North Dakota, to Grand Forks, North Dakota, and East Grand Forks, Minnesota; and eastward from a point in Grand Forks county, North Dakota, to Crookston, Minnesota.

In making this proposed disposition of these applications, we have been guided by various factors such as the relation of the territory involved to the proposed sources of supply, the extent of the service proposed to be rendered by the applicants in the territory involved, and the adequacy of the capacity of the facilities proposed to be constructed.

The communities which will be served by the North Dakota Company under this proposed disposition of the application are reasonably near the Baker and Bowdoin gas fields. There is no question but that service of natural gas to those communities will augment activity and production in the Baker field immediately and ultimately in the Bowdoin field and that the outlet so afforded will provide a market for North Dakota and Montana gas which might not otherwise arise. The Hugoton field on the other hand now provides natural gas for service in many large communities. The controverted communities which we have mentioned above appear reasonably to be within the potential markets of the Baker and Bowdoin fields.

The North Dakota Company plans to serve many communities and persons along the route of its proposed facilities before reaching the termini of its facilities in the controverted towns. In serving these points, the Kansas Company does not propose to serve the towns situated between Fargo and Bismarck and Fargo and Grand Forks, North Dakota.

The herein proposed disposition of these applications is based upon the facts and circumstances presently before us. In arriving at our final disposition, we intend to take into consideration any changed facts and circumstances that may bear upon these proceedings which may arise, either as a result of our direction for further showings by the applicants, or otherwise.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re New York Telephone Company

[Case No. 9164.]

Rates, § 568 — Hotel telephones — Burden of expense — Incoming and outgoing calls.

1. The practice of charging for outgoing telephone calls from hotels more than the cost of performing the outgoing service, in order to offset part of the cost of rendering service on incoming calls, would be to charge one person for a service which he did not receive, and such a practice would be entirely contrary to all of the other schedules of telephone rates and unjustly discriminatory, p. 351.

Rates, § 651 — Form of order.

2. An order requiring a telephone company to submit for the approval of the Commission appropriate amendments to its tariff to carry out the directions contained in a Commission memorandum is objectionable on the ground that it is unenforceable and leads to differences of opinion as to what the memorandum means; and instead of such an order a definite order should be adopted by the Commission clearly providing what charges are to be made, p. 354.

Public utilities, § 117 — Status of hotel telephone service.

3. Telephone service rendered to guest room telephones connected to private branch exchange systems in hotels, apartment houses, and clubs, except service originating and terminating within the hotel, apartment house, or club, is utility service subject to the jurisdiction of the Commission, p. 354.

Rates, § 568 — Hotel telephone service — Charge by owner or by utility.

4. Hotels, apartment houses, and clubs have no right to charge for telephone service except as agents of the telephone company, and all charges made by hotels, apartment houses, or clubs must be in accordance with the filed schedules of the telephone company, p. 354.

[July 26, 1939.]

PROCEEDING *on motion of Commission as to rates, charges, tolls, rules, regulations, and practices of a telephone company with respect to service rendered to and through hotels; held on rehearing that order should not be changed and that order should make definite provision as to status of hotel service and rates. For former opinion, see 26 P.U.R.(N.S.) 311.*

MALTBIE, Chairman: This is another case where it is suggested by a member of the Commission that we reverse a determination originally made, although in the meantime there has been no change in the law or in the facts.

This proceeding was instituted by

the Commission on its own motion to determine whether the charges made to hotel guests for telephone service were reasonable. The Commission had received complaints at various times regarding these charges, and upon May 5, 1937, adopted an order instituting an investigation and fixing a hearing. The Hotel Association requested an opportunity to make an investigation and place the results before the Commission. This took considerable time and hearings were held covering the period from May 26, 1937, to June 9, 1938. At these hearings, about 500 pages of testimony and argument were taken and 18 exhibits were offered in evidence. One exhibit alone contained several hundred sheets. Elaborate briefs, reply briefs, and reply-reply briefs were filed in July and August, 1938.

Upon November 30, 1938 (26 P.U.R.(N.S.) 311), the Commission adopted a memorandum and order (Commissioner Brewster alone dissenting) in which it fixed the maximum rates which could be charged for telephone *toll* calls originating in guests' rooms of hotels at the following schedule:

When the regular toll charge is 50 cents or less, the maximum charge shall not exceed such toll charge plus 5 cents.

When the regular toll charge is over 50 cents, the maximum charge shall not exceed such toll charge plus 10 cents.

The New York Telephone Company was directed to publish and file such rates in the usual way to become effective on or before January 1, 1939.

As to outgoing *local* messages, the practice of charging 10 cents was not interfered with, although such charge was in excess of the cost of such service.

[1] As to incoming toll calls, it was held that the telephone company could not properly charge hotel guests in excess of the standard rate. There is nothing in the company's tariffs that calls for a charge on outgoing calls to offset part of the cost of rendering incoming calls. It was pointed out that the fundamental principle upon which all telephone rates are based is that the person originating the call pays the charge and that the person receiving the call does not pay any part. It was held that to impose charges on incoming calls would not be just and reasonable, and that to charge for outgoing calls more than the cost of performing the outgoing service would be to charge one person for a service which he did not receive. Such a practice would be entirely contrary to all of the other schedules of telephone rates and unjustly discriminatory.

The New York Telephone Company accepted the order of the Commission but it appears that certain hotels have charged guests in excess of the legally established rates.

Upon request, a rehearing was granted but such rehearing was definitely limited "to the receipt of evidence that was not available at the last hearing held in this proceeding" (June 9, 1938). At the two hearings that were held, certain testimony was submitted on behalf of the Waldorf-Astoria hotel which abandoned the case as conducted by counsel for the Hotel Associations and presented an entirely new theory. However, as

Commissioner Van Namee does not base his memorandum even in small part upon the testimony given on rehearing, but uses only the facts upon which the case was originally decided, it is unnecessary to refer to the new testimony except upon one point. One of the grounds urged by counsel for the Hotel Associations was that the memorandum previously adopted by the Commission contained errors of fact. This allegation was not sustained on rehearing.

Although there has been no change in the facts or in the law and although Commissioner Van Namee voted for the memorandum adopted by the Commission and the order making that memorandum effective, he now argues that the Commission should reverse practically every point decided by the Commission last November and should greatly increase the charges which the telephone company was allowed to make to guests in hotel rooms. The following table will show how marked is the increase:

When the toll charge at regular rates is	Maximum Addition P. S. C. Finding	Comr. Van Namee
Up to 50¢	5 cents	10 cents
$ .55 to $1.00	10 cents	15 cents
1.05 to 2.00	10 cents	20 cents
2.05 to 3.00	10 cents	25 cents
3.05 to 4.00	10 cents	30 cents
4.05 to 5.00	10 cents	40 cents
Over 5.00	10 cents	50 cents

From the above, it appears that he proposes that the additional amount to be allowed upon outgoing calls from hotel rooms would be doubled in the first class and that the increases for the other classes would be from 50 to 400 per cent.

Having in mind that the facts upon which this case must be decided have not changed since last November, it is important to examine by what process of reasoning the conclusion is reached that the amount to be collected from the public should be so greatly increased.

In the first place, Commissioner Van Namee now contends that a person who makes a call from his hotel room should pay not only the cost of such outgoing call but also a part of the alleged cost of some other incoming call. He may have no incoming calls. All of his telephone service may be outgoing calls. Nevertheless, he is to be obliged to pay more than the cost of serving him, more than the cost of all outgoing calls, in order that someone else who has a large number of incoming calls may be served, without any additional charge. In other words, if a guest telephones to his home or office in a distant city, he is to pay $5.50 for that outgoing call; but if anyone in that distant place communicates with him, the charge is to be $5—50 cents less. Yet both calls may be of the same duration, the identical property may be used in each case, the same number of connections made, and the cost identical. The record contains nothing that justifies a different charge, but the Commissioner sees nothing unjustly discriminatory in what he proposes.

The memorandum and its findings assumes that the total cost of rendering each class of telephone service to a hotel guest has been determined in this proceeding. Such is far from the fact. Counsel for the Hotel Associations asked that the Commission investigate the cost to the telephone company of furnishing the service and equipment used by the hotels, the apparent purpose of such request be-

g that the Commission should as-rtain whether the charges being made r property and service furnished tels were reasonable or unreasona-e.

Commissioner Van Namee submit-d a memorandum to the Commission nder date of May 18, 1938, recom-ending that the subject should not investigated. Such recommenda-on was approved by the Commission on May 24, 1938. As a result, no e can determine from the record hat is the cost to the New York Tele-hone Company of rendering local or ll service to hotel guests or to the otel itself. It is therefore unwarrant-d to use certain figures in the record egarding the cost of rendering only rt of that service, to ignore what e cost of furnishing the major part f the service should be, and to as-me as has been done that what the mpany charges is the cost of pro-iding the service.

There is another important factor. ach hotel makes great use of the lephone equipment installed on their roperty by the telephone company hich owns and must maintain it. his equipment includes not only the ables to the switchboard and the witchboard itself but the wires con-ecting the switchboard with the guest ooms and the telephone instruments n the guest rooms. If the hotel uses his property for its own purposes and ot as an agent for the telephone com-any, it must, of course, pay for such se. But upon what basis should it ay?

In the first place, every hotel must rovide facilities to enable outsiders to alk to guests. It must do this even hough no guest were to originate a call himself. Every company engaged in business is practically obliged to have sufficient trunks, switchboards, wires, sets, and other equipment to enable anyone outside to telephone to that company. Its business may be such that few outgoing calls are made; but it cannot provide facilities only for such calls. These facts apply to hotels; they must have adequate facilities for all incoming calls and they cannot tax the caller without injuring their business. What hotel could continue to do business if it did not provide ample facilities for all incoming and intramural calls?

Now, the whole theory of the hotels, and the one Commissioner Van Namee accepts, is that the cost of this service should be shifted from the hotel as a business to the guest who uses *outgoing* calls only. Nowhere in the record is there any evidence to show what additional cost the outgoing call business imposes upon the 18 hotels covered by the extended study they made. But the facts do show uncontrovertibly that the rates fixed by the Commission's order of last November are amply sufficient to cover the cost of outgoing calls for the hotels named even assuming the charges made by the telephone company for the service it alone has been rendering equal the cost of that service. The hotels endeavor to get more and to shift to a certain class of service more than the admitted cost.

Commissioner Van Namee's conclusions are built entirely upon the assumption that the figures submitted by the Hotel Associations as to the costs of performing the service which they claim to render are entirely correct. It was pointed out in the November, 1938, memorandum, to which Com-

missioner Van Namee subscribed, that the figures submitted by the Hotel Associations were correct only if the many allocations which they made were correct. None of the hotels kept its records in such shape as to show how much of the expense incurred was directly attributable to the hotel use of the equipment. The telephone equipment installed in hotels by the telephone company is used for two purposes, one for intercommunicating purposes (entirely for the hotel itself and its guests in communicating within the hotel), the other for communicating with persons entirely outside of the hotel. The allocations made by the hotels themselves in determining what the cost to them of the outside service was have not been critically analyzed by independent engineers. One would naturally infer that those making the allocations, being employed by interested parties, would not place an undue burden on the hotels but would be inclined to attribute every item of cost that could be allocated to outside service.

In view of the fact that no careful analysis has been made by an independent engineer, we must depend upon an examination of the results of such allocations and the record itself. In the former opinion of the Commission, it was pointed out that the alleged expense to the hotels was an astonishingly large percentage of the amount which the telephone company received for its service. The facts are as follows for all of the hotels as a group.

According to the allocation of expenses which they submitted, the total average monthly telephone expenses for the 18 hotels covered by the investigation was $111,642.72. Of this amount $73,170.38 was paid to the telephone company for the service which it rendered, and $38,470.39 represented the alleged expenses incurred by the hotels, including the rental of telephone equipment, wages of switchboard operators, rental of switchboard space, taxes, etc.

These are significant figures and their meaning should not be carelessly passed over. Perhaps the subject can be illuminated by stating the situation in a different manner. The telephone company received in round figures $73,000, for which it provided all of the equipment in its system scattered all over the territory *outside* of the hotels—all over the state. The hotels claimed that the cost of the service they rendered *within* the hotels was $38,500 in round figures, or about 53 per cent of the amount received by the telephone company for the elaborate system which they maintained and the service which they rendered. In one instance, the amount claimed by the hotel as its expense exceeded the total amount paid to the telephone company and in many instances such alleged costs were over 70 per cent of the amount paid to the telephone company.

In the light of these facts, how can the Commission accept the figures submitted by the hotels and base charges to be made to the public thereon? Since the Commission found the facts as above stated last November, no change has been made in the record in relation thereto and the findings are as accurate today as they were when made.

[2–4] There is another aspect of the problem which the memorandum ignores. The proposal is that the New

York Telephone Company shall establish new rates; that the amounts so collected shall be the revenues of that company; that the hotels are only to act as agents and as such are obliged to turn over to the telephone company all of the revenues they collect for telephone service from any guest in the hotel. It follows that if hotels act as agents for the telephone company (hotels have no authority to engage in telephone service except as agents for a telephone company), they are entitled to be paid for such service as they render. Commissioner Van Namee's memorandum makes no findings as to the amount of such commissions. Consequently, the telephone company would be allowed to collect much more than it has been receiving, but there is no restriction on what it keeps and no guaranty that a larger share of this increase imposed on the public will not remain in the treasury of the company.

In the revised memorandum bearing date of June 27th, but only received today, Commissioner Van Namee has greatly changed his concluding recommendation. Originally, it was that the Commission should order the New York Telephone Company to cancel the present tariff in relation to charges made by hotels for toll service from hotel rooms and fix a schedule of charges quoted above. In the revised memorandum and in the order submitter therewith, he recommends that the New York Telephone Company be required "to submit for the approval of the Commission appropriate amendments to its tariff to carry out the directions contained in this memorandum."

Such an order is unenforceable and leads to differences of opinion as to what the memorandum means. The Commission has had experience with such orders and in no recent case has it reverted to the earlier practice which proved to be futile. If the Commission can tell from the memorandum what should be done, a definite order should be adopted; and if it cannot, how can the company be expected to interpret its determinations?

The schedule of charges fixed by the order of November 30, 1938 (26 P.U.R.(N.S.) 311), should not be changed, and the order now adopted should clearly provide that the telephone service rendered to guest room telephones connected to private branch exchange systems in hotels, apartment houses, and clubs, except service originating and terminating within the hotel, apartment house, or club, is utility service subject to the jurisdiction of this Commission. Hotels, apartment houses, and clubs have no right to charge for this utility service except as agents of the New York Telephone Company and all charges made by hotels, apartment houses, or clubs must be in accordance with the filed schedules of the New York Telephone Company.

General Statement

VAN NAMEE, Commissioner: By petition filed on December 16, 1938, counsel for the New York State Hotel Association and Hotel Association of New York city requested that the Commission grant a rehearing in this proceeding and suspend its order of November 30, 1938, *supra,* until the final determination of the Commission upon the rehearing. The petition set forth the following reasons for requesting a rehearing:

"1. To enable the petitioning Hotel Associations to submit further evidence with respect to the cost to hotels of servicing guest telephone calls, both outgoing and incoming, over the lines of the New York Telephone Company's system.

"2. To enable the hotels to submit further evidence which will elucidate, analyze, and explain the cost allocations which are already in evidence and from which cost allocations we respectfully submit the Commission has made erroneous findings of fact as to the cost to hotels of guest telephone service.

"3. To enable the hotels to present evidence that the surcharges fixed in the order herein for guest toll calls from hotels, and which are obviously based upon erroneous findings of fact, and erroneous computations and analyses of cost statements heretofore submitted, if applied to hotels, will result in great hardship and financial loss to hotels in the state of New York."

On December 21, 1938, the Commission made an order directing that a rehearing be held on January 20, 1939, such rehearing to be limited to the receipt of evidence that was not available at the last hearing in this proceeding. The order of November 30, 1938, *supra,* was not suspended. At the rehearing on January 20, 1939, counsel for the Hotel Associations stated he was not ready to proceed and requested an adjournment. He was joined in this request by counsel for the Hotel Waldorf-Astoria Association Corporation and by counsel for the real estate board of the city of New York. It was admitted by counsel for the Hotel Associations that hotels generally were making service charges in connection with telephon toll calls in excess of those provided i the telephone company's tariff file pursuant to the Commission's order o November 30, 1938, *supra.* An ex ception was the Waldorf-Astoria ho tel which was making such charges i accordance with the Commission's or der. The rehearing on January 20 1939, adjourned with the Commissio taking under advisement the request for a further hearing at a later date

On February 10, 1939, the Commis sion notified interested parties of rec ord that a hearing would be held o March 1, 1939, for oral argument on whether telephone companies under the jurisdiction of the Public Servic Commission have the right to deter mine the charges made by hotels and apartment houses to their guests upo outgoing telephone calls and whethe the Public Service Commission has the authority to regulate such charges

On March 15, 1939, the Commission by order directed the rehearing to pro ceed and set a hearing for March 30 1939, without deciding the question of jurisdiction. This hearing was ad journed to April 18th, at which time counsel for the Hotel Associations of fered evidence in relation to the matter alleged in his petition for a rehearing Briefs were thereafter filed.

There is little dispute as to the im portant facts in this proceeding. I is conceded that the hotel corporations are not incorporated under the Trans portation Corporations Law. It was also established that practically all ho tels in the state have been and are now making charges to their guests for tele phone service.

At the time this proceeding was in stituted, hotel guests were billed for

elephone service as such. In accordance with a suggestion made by the earing Commissioner at the first earing in the proceeding, a change as made by the hotel corporations in he method previously used in billing uests. It is now the practice of the otels to show separately on their uests' bills the charge for telephone ervice representing the charge made y the telephone company for toll calls nd the additional charge added by the otel for the so-called "hotel service harge." When this policy was inugurated, notices were posted in hoel guest rooms setting forth the schedle of rates to be thereafter charged y the hotel whenever the telephone n the room was used by the guest for aking either local or long-distance alls. A typical notice to be found ear the telephone in the rooms of ost hotels provides as follows:

NOTICE TO GUESTS

Hotel Telephone Service Charges

The hotel service charge on suburban and long-distance calls, as shown below, is made for telephone facilities in this hotel affording connection with the telephone company's lines. The substantial expense for equipment rental and special employees' services, to provide these facilities, is not included in the room charge because of the varying extent of telephone use by guests.

SCHEDULE OF HOTEL SERVICE CHARGES

Telephone Co.'s Charge	Hotel Service Charge
Calls up to 50¢	$ .10
$ .55 to $ .75	.15
.80 to 1.00	.20
1.05 to 1.50	.25
1.55 to 2.00	.30
2.05 to 2.50	.35
2.50 to 3.00	.40
3.05 to 5.00	.50
5.00 to 10.00	.75
10.00 up	1.00

Local calls 10 cents; service charge included.

No service charge on incoming messages.

Public coin box pay stations are available in the lobby for use by guests without any hotel service charge.

NEW YORK STATE HOTEL ASSO.

It is to be noted that this alleged "service charge," according to the Hotel Associations' version of it, "is made for telephone facilities in this hotel affording connection with the telephone company's lines." There can be no question but that hotels have been and now are engaging in the business of rendering telephone service to their guests. Without the intervention of employees paid by a hotel, no guest could complete either a local or long-distance telephone call. The reason for this is that the P. B. X. switchboard which is installed by the telephone company is operated by employees of the hotel. The hotels, therefore, take an active part in the rendition of telephone service and, according to the notice, the charge made by the hotel is designed to compensate the hotel for "the substantial expense for equipment rental and special employees' services, to provide these (telephone) facilities." No charge is made to the guest for this alleged hotel service unless the telephone is used for making either local or long-distance calls outside of the hotel. These undisputed facts establish that the hotels have been and now are engaging in the business of affording telephonic communication for hire. The effect of the relationship between the hotels, the telephone company, and the public is that telephone service for local calls is purchased by the hotels from the telephone company at wholesale and resold to the guests of the hotel at retail. In addition, facilities owned by the telephone company are used in furnishing intra-hotel communication for which no charge is made to a guest who avails himself of such service and charges are made by hotels for toll

calls in addition to the regularly established telephone company's rates for such calls.

The hotel companies concede that they have no authority to engage in the telephone business. They attempt to escape the illegality of the present method of conducting this business by claiming that the charge made is a "hotel service charge" as distinguished from a charge for telephone service. In considering this contention it is interesting to note that the hotels actually have paid on such charges the gross income taxes imposed by the legislature on corporations deriving revenues from the sale of telephone service. It follows, therefore, that these hotels for tax purposes have conceded that the presently alleged "hotel service charges" are in fact charges for the sale of telephone service. Furthermore, the hotels in this proceeding concede that they are assisting the telephone company in furnishing telephone service, and advance the claim that substantial expenses are thereby incurred which should be paid by the telephone company.

The telephone company apparently is only concerned with charges made by hotels in connection with furnishing telephone service to the extent that it is desirous of having it clearly appear on the guest's bills that the charge made for telephone service is not in its entirety a charge made by the telephone company. The telephone company further states that it does not consider that the hotel acts as its agent in furnishing telephone service to guests.

Legal Status of Hotels Furnishing Telephone Service

The question to be determined is whether under these facts a hotel corporation may legally continue to make charges to its guests for the rendition of telephone service.

It was recognized at the very beginning of telephone regulation in this state that local and long-distance telephone service rendered to guests of a hotel was a public telephone service to be furnished by the telephone company and to be charged for at rates established by said company. For many years, beginning with the first tariff applicable to hotel P. B. X. service ever filed by the telephone company with the Public Service Commission it was provided that hotel corporations in participating in the furnishing of telephone service to guests must become and act as agents for the telephone company for the collection of the telephone company's regularly established charges for such messages.

The first tariff ever filed by the telephone company with the Public Service Commission and which was effective on April 1, 1913 (Tariff P. S. C. –N. Y.–No. 1, Section 16, original sheet 2), contained the following provision:

"Messages, both local and toll, sent over the main switchboard trunks, are charged for at public telephone rates, and the subscriber is required to become and act as the company's agent for the collection of the company's regularly established charges for such messages."

This same provision in so far as it required a hotel to act as agent for the telephone company in the sale of telephone service to the public was continued in effect until February 1, 1930 (a period of about seventeen years). Such provision disappeared from the

telephone company's tariff on February 1, 1930, when a tariff was sent to the Commission by the telephone company to become effective February 1, 1930. This tariff was not filed, but the company contended that under the authority of a decree of the United States district court it had the right to put the proposed rates included in the tariff into effect. This Commission instituted a proceeding (Case No. 6177) and made an order in January, 1930 (P.U.R.1930B, 439) permitting the company's proposed schedule described above to go into effect, subject, however, to a reduction of 20 per cent in the rate increases proposed therein. Such rates were to be temporary rates pending trial of the rate proceeding then instituted. At the termination of Case No. 6177, *supra,* the Commission made an order on May 1, 1930, establishing the hotel P. B. X. schedules which were in effect at the time the previous determination in this proceeding was made.

The reason for the elimination of this agency provision from the tariff of the telephone company was not explained by the telephone company at the hearings. Mr. A. D. Welch, assistant vice president of the telephone company, did not attach any particular significance to the elimination of such a provision. Mr. Welch testified that while he was unfamiliar with the legal aspects of the omission of this provision from the tariff, the relationship between the telephone company and the hotels so far as the character of the service furnished is concerned had not changed since its elimination.

The Public Service Commission for the Second District in Connolly v. Burleson, P.U.R.1920C, 243, 248, considered the right of a hotel corporation to make charges for furnishing telephone service and held:

"The hotel does not charge for interior calls, which is hotel facility service and is furnished entirely by the hotel employees (of course by the use of the telephone system rented from the telephone company). The hotel, however, does charge for outside calls where its employees render practically no service. From this it will be seen that the proprietor of a hotel is charging not for service of a hotel facility character but is charging for service of a public utility character. This latter business the hotel proprietor has no legal authority to conduct. Hotel companies are not public telephone corporations.

"If a private 'phone is installed, the subscriber may well permit others to use his 'phone or refuse its use entirely, but he should not be allowed to sell service unless he does so as an agent of the telephone corporation, and thus be under regulation of the Public Service Commission, and have the service rendered in accordance with a filed schedule of rates."

The Wisconsin supreme court in Hotel Pfister v. Wisconsin Teleph. Co. (1930) 203 Wis. 20, P.U.R. 1931A, 489, 492, 233 N. W. 617, considered and passed upon a similar question when it held that the Railroad Commission of that state in the exercise of the general powers delegated to it by statute had authority to require a telephone company to discontinue service to a hotel of a public telephone unless the hotel conformed to the rates lawfully fixed by the Commission for public service. The action in the above case was brought for an

injunction to restrain the telephone company from shutting off a telephone connection with the hotel as the company threatened to do unless the hotel charged its guests for service at the rates filed by the telephone company with the Wisconsin Commission. The court stated:

"There is no attempt to regulate the charge the hotel may make to its guests for the intrahotel service it performs for them. It may charge and collect for this service by adding to its room charge to guests or by making a charge for every call from one room to another within the hotel. That is its own affair, with which neither the telephone company nor the Railroad Commission has the right or power to interfere. Counsel suggests that its 10-cent charge for calls outside is no more than a mere room charge, and as legitimate and as much within its right to make as a flat charge against every room of 25 or 50 cents a day added to the charge for each room to cover the private telephone service would be, but there is a wide and marked difference between the two methods of covering the cost of the service rendered by the private system. The 10-cent charge limited to outside calls affects only such guests as make use of the company's system maintained for the use of the public. Such charge is a charge for public service.

"The company cannot 'perform a service indirectly for the public, or any part thereof, which will result in the public being obliged to pay more for such service than could be demanded if the company performed it directly and entirely by means of its own facilities. If such practice were permitted, it would open the door to discrimination, and thereby afford a means of evading one of the most important provisions of the statute and render it impotent to accomplish the purpose of its enactment.' Vol. 5, Wis. R. C. R. 689.

"The Commissions or Boards of other states that have considered the precise or similar matters have uniformly held as held by our own Commission. Connolly v. Burleson (N. Y.) P.U.R.1920C, 243; Re Hotel Marion Co. (Ark.) P.U.R.1920D 466; Re Hotel Telephone Service and Rates (Mass. 1918) P.U.R.1919A 190; Hotel Sherman Co. v. Chicago Teleph. Co. (Ill.) P.U.R.1915F, 776. No court decision upon a similar matter has been called to our attention."

It seems clear from the foregoing authorities cited that hotel corporations have no legal right to engage in telephone service or to make charges to their guests for services performed in furnishing local or long-distance telephone service.

The telephone company is engaged in the business of furnishing service to the public. It has both a common law and a statutory duty to furnish adequate telephone service to the public at reasonable rates. Section 91 of the Public Service Law provides in part as follows:

"1. Every telegraph corporation and every telephone corporation shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. . . ."

Section 94 of the Public Service Law provides in part:

"2. The Commission shall have general supervision of all telegraph corporations, telephone corporations,

and telegraph lines and telephone lines within its jurisdiction as hereinbefore defined and shall have power to and shall examine the same and keep informed as to their general condition, their capitalization, their franchises, and the manner in which their lines and property are leased, operated or managed, conducted, and operated with respect to the adequacy of and accommodation afforded by their service and also with respect to the safety and security of their lines and property, and with respect to their compliance with all provisions of law, orders of the Commission, franchises, and charter requirements. The Commission shall have power either through its members or inspectors or employees duly authorized by it to enter in or upon and to inspect the property, equipment, buildings, plants, factories, offices, apparatus, machines, devices, and lines of any telegraph corporation or telephone corporation."

Section 97 of the Public Service Law provides in part as follows:

"2. Whenever the Commission shall be of the opinion, after a hearing had upon its own motion or upon complaint that the rules, regulations, or practices of any telegraph corporation or telephone corporation are unjust or unreasonable or that the equipment or service of any telegraph corporation or telephone corporation is inadequate, inefficient, improper, or insufficient, the Commission shall determine the just, reasonable, adequate, efficient, and proper regulations, practices, equipment, and service thereafter to be installed, to be observed and used, and to fix and prescribe the same by order to be served upon every telegraph corporation and telephone corporation to be bound thereby and thereafter it shall be the duty of every telegraph corporation and telephone corporation to which such order is directed to obey each and every such order so served upon it and to do everything necessary or proper in order to secure compliance with and observance of every such order by all its officers, agents, and employees according to its true intent and meaning. Nothing contained in this chapter shall be construed as giving to the Commission power to make any order, direction, or requirement requiring any telegraph corporation or telephone corporation to perform any act which is unjust or unreasonable or in violation of any law of this state or of the United States not inconsistent with the provisions of this chapter."

Where a hotel owner requests the telephone company to furnish its guests with facilities for making local and long-distance calls from their rooms, the hotel corporation may not make any charge or collect any amount from its guests except in the capacity of an agent for the telephone company. No charge for such service may be made by the hotel, as agent, other than the charge applicable to such service as provided in the telephone company's tariff. The money collected by the hotels, as agents, belongs to and must be accounted for to the telephone company.

The telephone company should be directed to make appropriate changes in its tariff so as to include a provision to the effect that where use is to be made of telephones in hotel guest rooms for making local and long-distance calls the hotel corporation by taking such service, shall be required

to become and act as the telephone company's agent for the collection of the company's regularly established charges for such messages and so as to eliminate such provisions in the present tariff as are inconsistent with our ruling herein.

Rates to Be Charged for Local and Toll Service from Hotel Rooms

The record in this proceeding establishes that the local and long-distance service furnished to guests in hotel rooms is more expensive to provide than the service furnished by the telephone company to members of the public at its public pay stations. The telephone company is entitled to compensation for this service whether the same is furnished by it directly or through the medium of its agents, the hotel companies.

The surcharges heretofore provided by the order in this proceeding were designed to compensate for furnishing this additional telephone service to guests and the tariff permitted the hotels to retain the amounts collected by them from guests. It is now determined that local and long-distance telephone service may only be furnished by a hotel corporation in its capacity as agent for the telephone company and the amounts collected for such service belong to the telephone company. The Commission will afford the telephone company an opportunity to fix the compensation to be allowed to its agents in connection with the furnishing of telephone service in hotels and elsewhere. But, of course, the Commission reserves the right given it by the legislature to review such compensation and arrangements. For example, if it were to appear that the compensation agreed to between a telephone company and its hotel agent resulted in discrimination, the Commission's power to eliminate such discrimination could be employed.

Much evidence has been received in this proceeding purporting to show the cost of furnishing the service now being considered. This cost was discussed in the previous decision of the Commission in this proceeding and will only be repeated herein to the extent necessary to show the factual basis upon which the rates to be hereafter charged by the telephone company are to be fixed.

The Basis for the Proposed Charges

By what amounts the charges for telephone messages originating in hotel guest rooms should exceed the charges for messages originating at other locations depends upon what items of cost of additional service at hotels are to be compensated for through the additional charges.

As pointed out in the Commission's opinion of November 30, 1938 (26 P.U.R.(N.S.) 311), the cost to the 18 hotels studied of all guest outgoing service averaged $19,828.42 per month, and these hotels were entirely compensated for the cost of such outgoing service by the 5 cents surcharge on local calls.

In addition to the 5 cents surcharge on local calls, there accrued to the hotels the difference between 5 cents per local message and the charges for local messages under the telephone company's message rate tariff. The average message charge to the hotels for local messages was approximately 3.8 cents each. The difference between 3.8 cents and 5 cents per message

amounted to $4,847.96 per month for the 18 hotels. Thus, there accrued to the hotels an average total per month of $25,047.80 ($20,199.84 plus $4,847.96) representing the difference between the local message charges of the telephone company and the 10 cents per local message charged guests.

The Commission's opinion of November 30, 1938, *supra,* permitted surcharges of 5 cents per message on guest toll calls for which the telephone company received up to and including 50 cents and a surcharge of 10 cents on toll calls of over 50 cents. It appears that, based upon the traffic during the study period, such surcharges would yield approximately $4,000 per month at the 18 hotels. This is about one-third of the revenue from service charges on toll calls in effect during the study period.

Adding the $4,000 of revenue from the surcharges on toll calls permitted by the Commission's order to the hotels' revenue of $25,047.80 from local calls gives the 18 hotels revenue of $29,047.80 per month from both local and toll guest calls under the Commission's order.

This revenue of $29,047.80 exceeds by $9,219.38 the hotels' cost of $19,828.42 of guest outgoing service, and comes within $9,422.59 of meeting the hotels' cost of $38,470.39 of both guest outgoing and guest incoming service. In other words, the surcharges permitted by the Commission's previous opinion were sufficient only to permit the hotels to recover their costs of guest outgoing service and half of their costs of guest incoming service. This made it necessary for the hotels to bear half of the costs of guest incoming service as an hotel operating expense.

Prior to the institution of this proceeding there was considerable variation in the hotel service charges on toll calls. The service charges of some hotels increased charges to guests as much as 25 per cent of the telephone company's regular schedule toll rates. Thus, for example, in such hotels a service charge of 50 cents was made for a $2 toll call.

During the progress of this proceeding a uniform schedule of service charges sponsored by the Hotel Association was adopted by most hotels and notices containing the schedule were posted in guest rooms. While this new schedule is nearly the same as the average of service charges previously in effect, its introduction had the beneficial effect of eliminating the extremely high service charges at some hotels and, through the notices posted in guest rooms, of advising guests as to the amount of the service charge that would be added if calls were made from guest room telephones and, further, that there were telephones in the hotel lobby at which calls could be made without any service charges being added.

Commissioner Brewster, in his memorandum of November 29, 1938 (26 P.U.R.(N.S.) at p. 320), recommended a schedule of surcharges on toll calls which the evidence in this proceeding indicated to him would be sufficient in general, when added to the surcharges on local messages or provided in the tariff to cover the additional cost at hotels of both guest outgoing and guest incoming service. The schedule of surcharges on toll

calls, recommended by Commissioner Brewster, is as follows:

When the toll charge at established rates is	Maximum Surcharge
Up to 50¢	$ .10
$ .55 to $1.00	.15
1.05 to 2.00	.20
2.05 to 3.00	.25
3.05 to 4.00	.30
4.05 to 5.00	.40
Over 5.00	.50

The presently effective charges for local calls should be reincorporated by the telephone company in an amended tariff. Such charges on local messages when considered together with the foregoing schedule of toll surcharges recommended by Commissioner Brewster would be sufficient (as nearly as it is practical to design rates to do so) to permit the telephone company to meet all additional costs associated with this more expensive service rendered to hotel guests and the company should be directed to file appropriate amendments to its tariff to place such rates in effect.

We are attempting by this determination to measure the additional cost *at the hotels* of the more expensive telephone service to be rendered by the telephone company to hotel guests. We believe that it would be proper in the determination of rates for such service to include as a basis therefor all costs properly associated with the furnishing of such service, including the cost of incoming and outgoing service.

It is true that telephone rates in general are designed so that the charge made at the point of origin is sufficient to defray all costs associated with the message, but the present rates of the telephone company were not designed so as to compensate the telephone company at the point of origin (outside of a hotel) for the additional costs associated with the more expensive service demanded and received at hotels by hotel guests. As a matter of fact, it would be wholly impractical to attempt to design rates by means of which the additional costs associated with hotel guest incoming service might be collected for at the point of origin of the calls. We hold as a matter of law that a telephone company has the sole legal right to charge for local and long-distance telephone service furnished to guests of a hotel and there seems to be no good reason why the hotel corporations should absorb one-half of the cost of furnishing the incoming telephone service on such calls. The telephone company is to furnish such service and is entitled to charge rates sufficient to compensate itself therefor. As a practical matter, the only proper method of designing rates to compensate it is to provide for surcharges on calls from guest rooms made to points outside the hotel which will be sufficient to pay the costs properly assignable to incoming and outgoing calls.

It may be argued that such a determination would be inequitable to a hotel guest who makes substantial use of the telephone in his room for calls to points outside the hotel but receives less than the average number of incoming messages. Such a burden, however, is more theoretical than real when we consider that, if as it is suggested, the additional costs associated with incoming messages were required to be paid in the first instance by the hotel corporations, the effect of such a division of costs would be that a guest who made no use of the telephone facilities for receiving incoming mes-

sages would still absorb a share of the cost thereof in the form of room charges paid to the hotel corporation. In considering this contention, it is to be noted also that under our former and present decision any guest may escape paying the surcharge we have provided by making the call from one of the public pay station telephones which are now installed in practically all hotel lobbies. It seems more equitable and practical to permit guests who desire this more expensive type of service to receive same and to pay therefor the costs properly associated therewith than it would be to require the hotel corporations to absorb in the first instance the costs of this service which we hold they have no authority to render for hire. Any decision requiring the telephone company to absorb these additional costs incurred at hotels would result in imposing a burden on other users of telephone service which they should not be required to bear.

Another alternative to the decision herein would be to deny to guests of hotels the privilege of using telephone facilities in their rooms for making local and long-distance calls. Such a suggestion is without merit since this particular type of service has proved so desirable and useful to hotel guests that they have made very substantial use of same at rates which, in the majority of instances, were much higher than those found herein to be just and reasonable.

The discussion herein as to hotel corporations applies with equal force to all users of service furnished by the telephone company under its hotel private branch exchange schedule.

Conclusion

An order requiring the New York Telephone Company to submit for the approval of the Commission appropriate amendments to its tariff to carry out the directions contained in this memorandum is attached hereto.

ORDER

This Commission having on November 30, 1938, *supra,* adopted an order in this proceeding directing and requiring the New York Telephone Company to file certain amendments to its tariff schedules and said company having filed certain revisions to its tariff, effective January 1, 1939, and now in effect, and New York State Hotel Association and Hotel Association of New York city having requested that a rehearing be granted, and this Commission having on December 21, 1938, granted such petition, and after said rehearing the Commission having determined that the telephone service rendered at guest room telephones connected to private branch exchange systems in hotels, apartment houses, and clubs, except service originating and terminating within the hotel, apartment house, or club, is utility service subject to the jurisdiction of the Commission, and having determined that hotels, apartment houses, and clubs have no right to charge for utility service except as agents of the New York Telephone Company, and the Commission having further determined that all charges for such service must be in accordance with the filed schedules of the New York Telephone Company, it is

Ordered:

1. That the New York Telephone Company be and it hereby is directed

and required to publish and file on not less than ten days' notice to the public and this Commission, to be effective on or before September 1, 1939, amendments to its present tariff schedules effecting the following changes:

A. Establishing a schedule of surcharges (in addition to charges which otherwise would apply) applicable to messages originating at guest room telephones connected to private branch exchange systems in hotels, apartment houses, and clubs as follows:

	Maximum Surcharge
Local Messages	
Local messages and messages of one, two or three message units, per message	5 cents
Toll Messages	
When the charge at established rate is	
Up to 50¢	5 cents
Over 50¢	10 cents

B. That the New York Telephone Company shall eliminate from its tariff any provisions inconsistent with the determinations of this Commission as hereinbefore set forth in this order.

2. That the New York Telephone Company shall not pay to any hotel, apartment house, or club commissions which are not allowed and paid to all hotels, apartment houses, and clubs under the same circumstances and conditions.

3. That the New York Telephone Company shall, within ten days of the receipt of a certified copy of this order, notify this Commission in writing whether the terms, conditions, and requirements of this order are accepted and will be obeyed.

MAINE SUPREME JUDICIAL COURT

Milo Water Company

v.

Inhabitants of Town of Milo

(— Me. —, 7 A. (2d) 895.)

Orders, § 12 — Interpretation — Matters considered.

1. A Commission order is in the same category as a decree of a court, and the pleadings, the issues presented, and in short the whole proceedings, must be considered to determine what the order was intended to accomplish, p. 369.

Rates, § 652 — Orders — Interpretation — Fire protection charges.

2. An order fixing a hydrant rate for the first 48 hydrants was construed as requiring a town to pay a water company for at least 48 hydrants, without the right to discontinue part of the hydrants and pay for a lesser number, when from a consideration of the entire proceedings it was apparent that the Commission was endeavoring to provide adequate revenue for the company and for a proper apportionment of charges between the municipality and private consumers, specifically calling attention to the fact that the amount to be paid for fire protection was a gross amount though figured on a per hydrant basis, p. 369.

MILO WATER CO. v. INHABITANTS OF TOWN OF MILO

Rates, § 652 — Interpretation of order — Estoppel by method of billing.

3. A water company, by billing a town for water on a hydrant rental basis when the Commission has fixed rates on such basis in proceedings indicating the intention that a gross amount shall be paid for fire protection service, is not thereby prevented from demanding payment of the gross amount intended after discontinuance by the town of the full minimum number of hydrants contemplated by the Commission order, against which action of the town there was an immediate protest when the town claimed the right to pay only for the balance, p. 370.

Rates, § 653 — Orders — Binding effect.

4. A town is bound by the terms of a Commission order fixing charges for fire protection so long as the order stands, although the town, if it feels itself aggrieved, has the right to apply to the Commission for a modification, p. 370.

Payment, § 55 — Interest on delinquent bills.

5. A claim by a water company against a town for indebtedness for fire protection charges established by Commission order is not unliquidated because the town disputes the claim, and when demand has been made annually for the amounts claimed and the town is in default for nonpayment the company is entitled to interest on its claim, p. 370.

[August 1, 1939.]

ACTION *by water company to recover fire protection charges assessed against a town by authority of a Commission order; judgment granted for water company.*

Argued before Dunn, C. J., and Sturgis, Barnes, Thaxter, Hudson, and Manser, JJ.

APPEARANCES: McLean, Fogg & Southard, of Augusta, for plaintiff; Fellows & Fellows, of Bangor, and Jerome B. Clark, of Milo, for defendants.

THAXTER, J.: This action of assumpsit is before this court on report. It is brought to recover a balance of $6,750 claimed to be due from the town of Milo to the Milo Water Company for fire protection service and $1,080 for interest. The only point at issue is the interpretation of an order of the Public Utilities Commission. For a proper understanding of the matter a survey of the long controversy between the town and the water company is pertinent.

In 1909 the parties entered into a contract under the terms of which the plaintiff agreed to supply water to the defendant. The contract was to run for twenty years. The town agreed to pay $1,500 each year for the use of forty hydrants and for certain other services a sum equal to the amount of the tax, if any, assessed against the company. In 1920, on petition of the company, the Public Utilities Commission entered an order authorizing an increase in the annual hydrant rental to $40 per hydrant. By votes of the town the number of hydrants was increased from forty until in 1929 there were forty-eight. September 30, 1927, the Commission ordered a further in-

crease in hydrant rental from $40 to $60 per hydrant. In promulgating this decree the Commission made the following statement: "We shall assume that the water company and the town of Milo will continue to be guided by the terms of the present contract, except as modified by this and former decrees of this Commission." The Commission here was referring to the fact that in accordance with the terms of the original contract the town remitted to the company the taxes which it could have assessed against it. April 1, 1928, the town countered by assessing a tax against the company, the portion of which applicable to the water system amounting to $3,837.93. On August 1st following, the company petitioned the Commission for an increase in rates to meet this additional operating cost; and on October 26, 1938 (P.U.R.1929B, 330, 334) the Commission entered a decree authorizing an increase in hydrant rental to $140 per hydrant to compensate for such taxes. In explanation of its order the Commission said: "Although the amount to be paid for municipal fire protection, both in the existing schedule of rates and in the schedule as modified by this order, is ascertained on a per hydrant basis, that fact is merely a convenient method of determining what the proper gross amount to be paid for the fire protection service shall be. The company is affording certain protection within the territory covered by the municipal hydrants. If more hydrants were installed within that territory, the costs to the company for fire protection services would not be increased proportionately to the number of new hydrants installed. We shall, for this reason, increase the per hydrant rate of the existing hydrants only, this being the number on which the present revenue requirements are based. If additional hydrants be installed, the per hydrant rate therefor will be fixed at $60 which, in our opinion, will be sufficient to reimburse the company for the extra expense that would be incurred in furnishing such additional hydrant service." It is apparent that the Commission was seeking to establish a certain minimum amount which the town should pay for fire protection on the assumption that there would be at least forty-eight hydrants for which the town would pay. The following year on June 19, 1929, the plaintiff again petitioned for an increase in rates. The Commission in justification of an order filed January 27, 1930 (P.U.R.1930B, 269, 277) directing an increase in the rates of both private consumers and of the municipality considered with great care the amount of revenue which it felt that the company should receive. It figured that there should be an increase to be paid by the town of $480 and by private consumers of $564. With reference to the increase to be paid by the town the Commission said: "We have increased the hydrant rental for first 48 hydrants from $140 to $150 per year, resulting in increased revenue of $480." Then follows the order which so far as it relates to municipal services reads as follows:

For the first 48 hydrants, each hydrant, $150.00
Each additional hydrant 60.00

At the annual town meeting held March 14, 1932, the town voted to discontinue as of April 1, 1932, the use of four hydrants and the clerk of the company billed the town for forty-

four hydrants at $150 each. Immediately, however, on the matter being called to the attention of the president of the company, a corrected bill was sent for forty-eight hydrants at $150 each, and the company has always claimed that it was entitled to be paid on this basis. At the annual town meeting held March 13, 1933, the town voted to discontinue the use of three more hydrants.

The plaintiff claims that it is entitled to receive from the town for hydrant rental a minimum amount of $7,200 per year from April 1, 1932, to December 31, 1938. The town claims that it is only required to pay for forty-four hydrants from April 1, 1932, to April 1, 1933, and for forty-one hydrants thereafter, and these amounts it has paid. This suit is brought to recover the balance amounting to $6,750 and interest of $1,080.

The defendant does not deny that at all times since April 1, 1932, the plaintiff has maintained forty-eight hydrants ready for use but it does claim that the order of the Public Utilities Commission does not require the town to pay a lump sum for fire protection and that it accordingly had the right to discontinue the use of any hydrants and is required to pay only for the balance at the scheduled rate of $150 per year per hydrant.

[1, 2] Counsel for the defendant insist that this court can consider only that part of the Commission's finding and order which reads: "For the first forty-eight hydrants, each hydrant $150." They say that the meaning of these words taken by themselves is clear and that therefore we can investigate no further. But it is a cardinal rule of interpretation applying to writings generally that every phrase must be read in connection with the whole instrument, and particularly in the case of a decree of a court, and an order of the Public Utilities Commission is in that category, that the pleadings, the issues presented, in short the whole proceedings must be considered to determine what the decree was intended to accomplish. Vicksburg v. Henson (1913) 231 U. S. 259, 58 L. ed. 209, 34 S. Ct. 95. Courts are concerned today with substance rather than with form, with the spirit rather than with the letter.

It is obvious that the Public Utilities Commission did not view the petition filed June 19, 1929, on which the order in question is based as an isolated proceeding. It is in effect a petition for a modification of its earlier order, which in turn modified an order entered several years before. To determine what the Commission intended, the entire proceedings should be considered. From these it is apparent that the Commission was endeavoring to provide adequate revenue for the water company and for a proper apportionment of charges between the municipality and private consumers. When the town, as it had a right to do, collected from the company taxes which became a part of its operating expenses, rates for fire protection were raised. In its last order the Commission calls attention to the fact that the increase in rental of $10 per hydrant would result in increased revenues of $480. In its review of the case accompanying its order of October 26, 1928, *supra*, it specifically calls attention to the fact that the amount to be

paid for fire protection is a gross amount though figured on a per hydrant basis. Looking at the whole record, it is clear that the Commission was concerned with the gross amount to be paid by the town for fire protection rather than with the amount to be paid per hydrant and that the rate was established on the assumption that there would be a minimum of forty-eight hydrants. Though the form of the order did not call for the payment of a gross sum as in the case of Damariscotta-Newcastle Water Co. v. Itself (1936) 134 Me. 349, 15 P.U.R.(N.S.) 498, 186 Atl. 799, yet, that a fixed minimum amount should be paid was clearly the intent of the Commission. There seems to be no reason whatsoever why this court should tear an isolated phrase from its context and give to it a meaning clearly at variance with that which the Commission intended.

[3] Counsel for the defendant call attention to the fact that bills were rendered by the plaintiff on a hydrant rental basis. This was of course of no consequence to the plaintiff so long as the town paid for the full number of forty-eight hydrants. The significant fact is that there was an immediate protest when the town claimed the right to discontinue certain hydrants and pay only for the balance.

[4] If the town feels itself aggrieved by the order in question, it has the right to apply to the Commission for a modification of it. So long as it stands, the town is bound by its terms.

[5] The defendant claims that it is not liable for interest because the claim sued on is unliquidated and in any event is uncertain because of the unsettled state of the law. We cannot see that the law is at all doubtful, nor is a claim unliquidated merely because one party disputes it. A demand was made by the plaintiff each year for the amounts here claimed. The defendant was in default for nonpayment. There seems to be no reason why the plaintiff is not entitled to interest.

The record before this court indicates that the sums claimed became due December 31st of each year. The writ is dated December 12, 1938. The sum claimed for the year 1938 was not then due and payable. The plaintiff is entitled to recover only for the amounts claimed to December 31, 1937, totaling $5,700, with interest to the date of the writ amounting to $1,069.70. Without prejudice to the right of the plaintiff to bring suit to recover for payments due since December 31, 1937, the entry will be:

Judgment for the plaintiff for $6,769.70 with interest from the date of the writ.

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Re Hendrum Telephone Company

[M-2466.]

Rates, § 124 — Reasonableness — Factors considered.

1. The Commission, in establishing a rate, must consider the fair value of the property used and useful in rendering the service, the amount of income which would properly be produced by the proposed rate, and the cost of service, p. 372.

Expenses, § 3 — Powers of Commission — Management.

2. The Commission may not ignore the actual expenses incurred by a public utility company in rendering adequate service to the public in the absence of a showing that the management has been extravagant, improvident, or wasteful in the operation of the plant, p. 372.

[August 4, 1939.]

APPLICATION *for authority to change telephone rates; granted.*

By the COMMISSION: Pursuant to notice duly given, hearing in the above-entitled matter was held in the city hall, Hendrum, Minnesota, at 10 o'clock in the morning on June 15, 1939, at which time all interested parties were given an opportunity to present evidence and be heard.

APPEARANCES: F. W. Putnam, Attorney, Minneapolis, and T. C. Macoubrey, St. Paul, for the Hendrum Telephone Company; Jasper Hoaland, Wm. Anderson, Oscar Stordahl, J. Kenning, and H. Morsoen, all of Hendrum, for the objectors; A. N. Fancher, Supervisor of Telephones, St. Paul, for the Railroad and Warehouse Commission.

It appears from the record that the Hendrum Telephone Company is a corporation and operates a local telephone exchange at Hendrum, Minnesota, serving 57 towns and 130 rural stations. The present and proposed gross rates of the petitioner are as follows:

	Present Rates	Proposed Rates
Individual line		
Business	$2.25	$3.00
Residence	1.50	2.00
Rural multiparty business		
Grounded	2.25	2.50
Metallic	2.25	2.75
Rural multiparty residence		
Grounded	1.50	1.75
Metallic	1.50	2.00
Extension stations		
Business	.50 net	.75 net
Residence	.25 "	.50 "
Extension bells	.25 "	.25 "
Rural schools	15.00 "	15.00 "
Hand sets—Town		
Additional charge	.25 "	.25 "
Desk sets—Rural		
Additional charge	.25 "	.25 "

Temporary disconnections at one-half regular rate for any class of service.

A discount of 25¢ per month to be allowed on all town gross rates if paid on or before the 15th of the month for which service is rendered. Rural multiparty rates payable quarterly in advance with a discount of 75 cents.

The petitioner submitted a statement showing the annual operating revenues, operating expenses, and net income from the operation of the Hendrum exchange for the 5-year period 1934–1938 to be as follows:

	Operating Revenues	Operating Expenses	Net Income
1934	$3,877	$3,592	$285
1935	4,024	3,692	332
1936	4,148	3,817	331
1937	4,193	4,001	192
1938	3,912	4,110	198*

* Reverse entry.

This indicates that the average annual net income for interest and return on investment during the 5-year period is $188.

The company contends that the present rates do not produce sufficient revenue to permit it to maintain its property in an efficient manner and pay a reasonable return upon the capital invested in plant and equipment used and useful in rendering service.

During the year 1938 there was no net income but a deficit of $198. That due to state and Federal minimum wage requirements and increase in taxes a much greater deficit will be experienced in the future.

State's Exhibit "A," prepared by the statistical department of the Commission from the annual reports on file with the Commission for the Hendrum exchange covers the period 1930 to 1938, both inclusive, and shows an average annual net income for this 9-year period, for interest and return on investment, of $156. In this case the company did not submit an inventory and appraisal of the property, but for a rate base relied upon the original cost of the plant and equipment as reflected by its books.

It is found from State's Exhibit "A," that the book cost, plus working capital, of the property at December 31, 1938, is $16,857 and that the balance in the reserve for accrued depreciation is $2,948, leaving a net book cost of $13,909. Page one of the Company's Exhibit Number 3 is a statement of estimated annual earnings and expenses under present and proposed rates. This statement indicates a deficit under the present rates of $490 and a deficit of $101 under the proposed rates. In view of the fact that the proposed rates will not result in a net income to the company, but a deficit will still be experienced, the rate base is not an important factor in this case.

The objectors in this proceeding filed petitions with the Commission, carrying one hundred and thirty-two signatures, objecting to the proposed rates, principally upon the grounds that the present management gained control of the property through a stock manipulation which did not meet the approval of the community. Inasmuch as this stock transfer took place nine years ago it would appear that if there was any unlawful manipulation it would have been determined in court, as provided by law.

[1] In establishing a base for a reasonable rate the Commission is required by law to consider certain fundamental facts. First, the fair value of the property used and useful in rendering the service; second, the amount of income which will properly be produced by the rate to be established; third, reasonable expenses incurred by the company in rendering adequate service to the public.

[2] In considering the expenses of

a public utility, the courts have said: "That neither the court nor the Commission can substitute its judgment for that of the officers of the company."

In the absence of a showing that the management has been extravagant, improvident, or wasteful in the operation of the plant, it is considered that the Commission may not ignore actual expenses. Even if such a showing could be made in this case, and several hundred dollars deducted from the operating expenses, the net income would still be short of paying a reasonable return upon the fair value of the property.

After due consideration of all matters herein involved and being fully advised in the premises, the Commission finds:

1. That the present rates of the Hendrum Telephone Company are unreasonable and do not produce any return upon the capital invested in plant and equipment used and useful in rendering telephone service.

2. That the following rates are reasonable and will not produce more than a fair return upon said property:

Individual line		
Business	$3.00	per mo. gross
Residence	2.00	" " "
Rural multiparty		
Business		
Grounded	2.25	" " "
Metallic	2.50	" " "
Residence		
Grounded	1.75	" " "
Metallic	2.00	" " "
Extension stations		
Business	.75	" " net
Residence	.50	" " "
Extension bells	.25	" " "
Rural schools	15.00	" annum net
Hand sets—Town		
Additional charge	.25	" mo. net
Desk sets—Rural		
Additional charge	.25	" " "

Temporary disconnections at one-half regular rate for any class of service.

A discount of 25 cents per month to be allowed on all town gross rates if paid on or before the 15th of the month for which service is rendered. Rural multiparty rates payable quarterly in advance with a discount of 75 cents.

COLORADO PUBLIC UTILITIES COMMISSION

Re Pagosa Springs Telephone Company, Incorporated

[I. & S. Docket No. 228, Decision No. 13857.]

Rates, § 545 — Telephones — Private residence rates.

Private residence telephone rates should apply where the phone is in a private residence, if there is no designation in the directory to disclose that a business is carried on where the phone is located and if there is no convincing proof that the primary use of the telephone is for business and commercial purposes.

[August 11, 1939.]

HEARING *to determine reasonableness of proposed telephone rates; rates approved.*

APPEARANCES: Conour and Conour, Attorneys at Law, Del Norte, for the Pagosa Springs Telephone Company, Inc.; John H. Galbreath, Pagosa Springs, for Archuleta county and town of Pagosa Springs; A. Miskowiec, Pagosa Springs, pro se; Mrs. Edna Hatcher, Pagosa Springs, Colorado, pro se; Mrs. James Corrigan, Pagosa Springs, Colorado, pro se; E. Lowell, Pagosa Springs, Colorado, pro se.

By the COMMISSION: On November 30, 1938, the Pagosa Springs Telephone Company, Inc., filed a certain tariff with the Commission, designated as P. U. C. No. 2, governing its rates and charges for telephone service and setting forth its rules and regulations in connection with its operations in Pagosa Springs, Colorado.

Said tariff disclosed that the rates to be charged were substantially higher than the then effective rates, and by Decision No. 12707, the Commission on December 13, 1938, issued its order suspending said tariff for a period of 120 days from January 1, 1939, or until the further order of the Commission. Thereafter, on January 27, 1939, said Pagosa Springs Telephone Company filed a new tariff with the Commission, wherein certain reductions in rates for residence telephone service were made as compared with the tariff filed on November 30, 1938. In conjunction with said new tariff, a petition was filed with the Commission requesting that our suspension order be vacated. Thereafter on February 8, 1939, an order was entered (Decision No. 12995) permitting the rates set forth in the tariff filed November 30, 1938, as amended by the schedule filed January 27, 1939, to become effective on February 1, 1939, but providing that said rates should be subject to any future findings by the Commission as to their reasonableness. Thereafter, the matter was duly set for hearing, and heard, on June 2, 1939, at Pagosa Springs, Colorado.

The evidence disclosed that the Pagosa Springs Telephone Company, Inc., has a capital stock of 25,000 shares. At the time of the hearing, no stock had been issued except qualifying shares to the directors. Charles F. Rumbaugh, president of the company, had been operating the same as an individual up to the time of the incorporation of the company in November, 1938. Previous service was from 7 A. M. to 9 P. M., while 24-hour service is now being rendered. The company does not own any of the rural lines with possibly one exception, but has practically rebuilt the entire plant within the corporate limits of the town of Pagosa Springs.

Exhibit No. 1 was received in evidence, which is a valuation report by the electrical and gas engineer of the Commission, of the company's property. This report disclosed that the system was entirely revamped in 1938 by replacing the main part of the exchange aerial wire with aerial cable and replacing most of the poles. The system is what is known as the magneto type and is modern and up to date. The engineer gives a reconstruction value depreciated as of April, 1939, of $13,211. This figure includes a going concern value of $847 and a working capital of $438.

Exhibit No. 2 introduced in evidence is a rate analysis by our director

of rates and research, and discloses that using the company's operating expense estimate and allowing a 6 per cent return on the valuation, operation at the present rates would show a deficit of $1,643.75, said operating expense being estimated at $5,895.48. By using the engineer's estimated operating expense of $4,596.33, the annual deficit would amount to $344.80.

No protest was made against the proposed schedules of the Pagosa Company. The only objection interposed at the hearing consisted of certain individuals whose classifications had been changed from the residence rate to the business rate. In view of this condition and due to the fact that it is apparent the company is not earning more than, and probably not as much as, a fair return on the valuation of its property would justify, we see no need of any discussion in detail of the question of valuation or operating expense. The main difference between our engineer's operating expense, figures and those of the company is in the amount of the salary of the general manager. The company is allowing a salary of $100 per month, while the engineer recommends the sum of $30 per month. It was disclosed that the general manager did not devote his full time to the business. The engineer was of the opinion that the lineman could also take care of the books, and makes an allowance of $1,200 per annum for both such services, while the company shows an expenditure of $1,320 for lineman and $600 per annum for a bookkeeper.

If any controversy existed as to the actual rates, the Commission would feel it incumbent to determine these matters, but in view of the present situation, we believe it sufficient to say that, in our opinion, the Commission's engineer's figures are approximately correct.

So far as the changing of the classification of some of the subscribers, it appears that tariff of applicant provides that:

"Business rates apply, regardless of location, to any station where the subscriber's primary use of the service is for business or commercial purposes, ..."

Dr. Miskowiec testified that he was engaged in the active practice of medicine at Pagosa Springs; that he formerly had two phones, one in his office and one in his residence, but when the increased rates went into effect, he discontinued his office phone. The company then placed his residence phone on the business rate, which he refused to pay. He further testified that his residence phone was used much more for family purposes than for business purposes; that he had had only one business call at his home in the two weeks preceding the hearing, and that in his opinion not over one-half of one per cent of the calls received at his residence had to do with his medical practice. His office is in the same block, but some distance from his residence.

Mrs. Edna Hatcher, another resident of Pagosa Springs, testified that she had had a private phone in her house for ten years; that she did have several rooms that she rented when possible and that her daughter conducted a beauty shop in her home; that the telephone is in her living room and used by her daughter, but that the mother pays the bill and most of the

calls received do not have anything to do with business or commercial matters.

Mrs. Corrigan, who lives one mile east of Pagosa Springs on a ranch, was formerly listed as "The James Corrigan Dairy." The name so appeared in the directory of October 1, 1938. However, she stated that she refused to be listed as a dairy when the new rates became effective, and in the directory of May 1, 1939, the name appears simply as "James Corrigan." She testified that she had not received over four calls in April and two in May, 1939, concerning dairy business.

One of the county commissioners testified that they had had a meeting with Mr. Rumbaugh when the question of the raise in telephone rates was discussed, and it was understood that while the rates in town were to be raised, the rural or country rates were not to be increased. Mr. Rumbaugh testified that it was at the suggestion of one of the Commission's employees that where businesses were conducted in the home or on a ranch, they should be classed as a business so far as telephone rates were concerned. It is the opinion of the Commission that if there is no designation in the directory to disclose that a business is carried on where the phone is located and the phone is in a private residence, the private residence rate would apply unless there is very clear and convincing proof that the primary use of the telephone is for business and commercial purposes, and this does not appear to be the case in any of the instances which have been brought to the Commission's attention.

"A telephone company was forbidden to apply business rates to . . . residences where occasional business calls come in." See Re Sullivan Teleph. Co. (Ind.) P.U.R.1930E, 282.

"Where a telephone subscriber's directory listing bears a business designation, he should pay the regular rates for business service, even though the telephone is located in his residence; otherwise, the business designation in the directory should be eliminated and he should pay only the rates for resident service." Public Service Commission v. Youngblood Teleph. Co. (Mo.) P.U.R.1932B, 50.

It should be noted in this connection that in the listing of May 1, 1939, of the phone at Dr. Miskowiec's residence, he is simply designated as "A. Miskowiec."

After a careful consideration of the record, the Commission is of the opinion, and so finds, that the tariffs filed by the Pagosa Springs Telephone Company, Inc., on November 30, 1938, designated as P. U. C. No. 2, as modified by the amendments filed on January 27, 1939, are just and reasonable rates and rules and regulations, and that the instant proceeding should be dismissed. We are further of the opinion, and so find, that the classification of service should be governed by the rule heretofore announced in our findings.

Re Hazelwood, Incorporated

[Docket No. 5698.]

Parties, § 18 — Intervention — Showing required.

1. One who seeks to intervene in a radio broadcast hearing before the Commission should show not only his interest in the proceeding but the facts on which he bases his claim that his intervention will be in the public interest, and intervention should be permitted only where the public will benefit through aid or assistance given to the Commission or the applicant by a party intervener, p. 378.

Procedure, § 15 — Scope of proceeding — Enlargement of issues.

2. Good administration requires that unduly long and expensive hearings be avoided, and the Commission, in considering an application for radio broadcast facilities, should not burden itself or the applicant by the injection in a hearing of issues concerning which the Commission has already satisfield itself, but should grant a motion for enlargement of the issues only upon a showing that the new issues are proper matters for the Commission to consider, that there is a basis for believing that the Commission would be required to deny the application on the new grounds alleged, and also that the proposed new issues should be heard at the hearing already set rather than at a later time, p. 380.

[September 29, 1939.]

APPLICATION *for construction permit to erect a rebroadcast station; petition to intervene and request for enlargement of issues denied. Action taken by Commissioner Payne unanimously upheld by Commission October 11, 1939.*

PAYNE, Commissioner (presiding at Motions Docket): This petition was filed by the Orlando Broadcasting Company, Inc., licensee of Radio Station WDBO, Orlando, Florida, and requests leave to intervene in the hearing designated by the Commission on the above-entitled application and further requests that the issues heretofore designated by the Commission to be heard at said hearing be enlarged to include the following: (a) to determine the extent of the broadcast service already rendered in the Orlando area; (b) to determine if the interests of Station WDBO will be adversely affected by a grant of the above-entitled application; and (c) to determine whether the operations of the station proposed by the applicant will be in accord with the Commission's plan of allocation and standards of good engineering practice.

Petitioner requests that it be made a party in the proceedings on the application of Hazelwood, Inc., and that it

be allowed to present evidence on the issues listed in the notice of hearing heretofore published by the Commission as well as upon the additional issues requested to be added and any further issues which may be added hereafter.

When the application of Hazelwood, Inc., was received by the Commission it was examined as required by § 309(a) of the act, and because the Commission was unable upon such examination to reach the decision that the public interest, convenience, and necessity would be served by a grant of the application it was designated for hearing in order to afford the applicant an opportunity to be heard on the question of whether or not the application should be granted. The only issue specified by the Commission in the notice of hearing was that relating to the possibility of adverse effect upon the service rendered by Stations KLRA, WHK, and WMFJ by reason of electrical interference which might result from the operation of the proposed new station.

The instant petition to intervene and to enlarge the issues to include questions other than those specified in the notice of hearing requires an interpretation of the Commission's rule 1.102 which became effective on August 1, 1939. Because the questions raised by the instant petition are also involved in a number of other petitions now pending on the motions docket, I feel that it is appropriate to express in some detail my views concerning the sufficiency of the instant petition in the light of the Commission's present rule governing intervention and enlargement of issues.

[1] The Commission's rule relating to intervention and enlargement of issues, reads as follows:

"Section 1.102 Intervention. Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest and must be subscribed or verified in accordance with § 1.122. The granting of a petition to intervene shall have the effect of permitting intervention before the Commission, but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. . The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same."

In applying this rule to the instant petition I will deal with the request to intervene, and the request to enlarge issues separately.

Petitioner's Request to Intervene

The underlying purpose of the Commission in adopting its present rule on intervention was to correct a practice which had become prevalent under the prior rule of the Commission relating to intervention. Under its former rule, the Commission permitted any person to intervene in a hearing if his petition disclosed "a substantial interest in the subject matter." This standard was so broad and the Commission's practice under it was so loose that intervention in Commission hearings came to be almost a matter lying in the exclusive discretion of persons seeking to become parties to Commis-

sion proceedings. The experience of the Commission during the past few years clearly demonstrated that the participation of parties other than the applicant in broadcast proceedings in a great many cases resulted in unnecessarily long delays and expense to both the Commission and applicants without any compensating public benefit. In many cases the major function served by interveners was to impede the progress of the hearing, increase the size of the record, confuse the issues, and pile up costs to the applicant and to the Commission through the introduction of cumulative evidence, unnecessary cross-examination, dilatory motions, requests for oral argument, and other devices designed to prevent expeditious disposal of Commission business.

The underlying purpose of the present rule is to limit participation in proceedings, particularly on broadcast applications, to those persons whose participation will be of assistance to the Commission in carrying out its statutory functons. The present rule requires a petitioner to set forth not only his interest in the proceeding but also "the facts on which the petitioner bases his claim that his intervention will be in the public interest." The fact that a proposed intervener may have the right to contest in a court the validity of an order granting or denying a particular application does not in and of itself mean that such person is entitled as a matter of right to be made a party to the proceedings before the Commission on such application. Intervention in proceedings before administrative agencies like the Federal Communications Commission is ordinarily covered by statutory provision. The Communications Act contains no provisions giving the right of intervention in proceedings before the Commission to any person or class of persons, but expressly provides that the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. By the adoption of Rule 1.102 the Commission in effect has declared that it will conduce to the proper dispatch of business and to the ends of justice if it permits intervention in a proceeding before it only if the making of a record in which the facts are fully and completely developed is facilitated by permitting the requested intervention. It is this theory—that where the public will benefit through aid or assistance given to the Commission or the applicant by a party-intervener in a broadcast hearing, such participation should be permitted—which underlies Rule 1.102.

The petition of the Orlando Brodcasting Company, Inc., utterly fails to meet the requirement of the present rule on intervention. In so far as it requests permission to participate in the hearing already designated on the application of Hazelwood, Inc., it simply prays that the petitioner be made a party and be allowed to present "evidence." Not the slightest intimation is given as to the type of evidence which the petitioner desires to adduce or what petitioner intends to prove by the introduction of such evidence. The only issue mentioned in the Commission's notice of hearing is the issue of electrical interference to Stations KLRA, WHK, and WMFJ, which are now operating either on 1390 kilocycles (the frequency requested by

Hazelwood, Inc.) or on adjacent frequency. The petitioner operates its station on 580 kilocycles, so there could be no electrical interference to petitioner's station, and while it would not be impossible for the petitioner to obtain data on the issue specified in the Commission's notice of hearing, it is not likely that the petitioner is as well informed or is as well equipped to adduce testimony concerning the issue of electrical interference as is the Commission itself. Without a proper showing of the type of evidence proposed to be adduced and the facts expected to be proved thereby, the Commission would not be justified in permitting the petitioner to intervene in the proceedings on the application of the Hazelwood, Incorporated.

On the basis of the allegations now set forth in the instant petition the request for intervention must be denied in so far as it requests permission to participate in the hearing on the issue already designated. In so far as the petition requests permission to adduce evidence pertaining to the issues which it requests the Commission to add to the notice of hearing, it is necessarily contingent upon the action which is taken on the request to enlarge issues. For reasons stated below, this request must also be denied. Hence, the request to intervene in order to adduce evidence relating to these issues must be denied not only for the reasons above stated but also because the request to enlarge issues is denied.

Petitioner's Request to Enlarge Issues

[2] The determination of what issues an applicant for broadcast facilities should be required to meet in a hearing on his application is a matter committed by Congress to the discretion of the Commission. No hearing whatever is required if the Commission is able upon an examination of an application to determine that the public interest, convenience, and necessity will be served by granting the application. If the Commission is not able to reach such a determination upon the examination of an application, the statute requires that notice and an opportunity to be heard shall be given the applicant, but not otherwise.

Good administration, both from the theoretical and practical standpoint, requires that unduly long and expensive hearings should be avoided. Therefore, the Commission should not burden itself or the applicant by the injection in a hearing of issues concerning which the Commission has already satisfied itself. Furthermore, if in a particular case it appears that a hearing on a particular issue would be expensive and time-consuming, while a hearing on another issue, which might finally dispose of the application, would be relatively inexpensive and expeditious, the Commission as a matter of administrative convenience should set down the application for hearing only on the latter issue.

In the instant case the Commission was unable to find that the public interest, convenience, and necessity would be served by granting the application of Hazelwood, Inc., because of the possibility of interference with the service now rendered by three other stations. If at the hearing on its application the applicant is unable to sustain the burden with respect to this issue, the Commission will enter an order denying the application, which will

completely dispose of the proceedings. In such event, it would have been wholly unnecessary and wasteful of both time and money for the Commission to have ordered a hearing not only upon the issue of electrical interference but also upon other issues which might also have constituted a basis for denying the application.

It is incumbent upon any person requesting the injection of new issues in a hearing to show not only that the issues which he proposes to have the Commission add are proper matters for the Commission to consider, and that there is a basis for believing that the Commission will be required to deny the application on the new grounds alleged, but also that the proposed new issues should be heard at the hearing already set rather than at a later time. Certainly, if the issues specified by the Commission in a notice of hearing are in themselves a sufficent basis for denying an application if the applicant fails to sustain its burden of proof, no third person is harmed because the Commission does not also include in the hearing other and different issues, even though conceivably it may be necessary at some later time for the Commission to designate the application for further hearing if the applicant meets its burden on the issues already specified. The instant petition to enlarge issues merely states that the three issues requested for inclusion in the hearing are proper issues for the Commission to consider before acting upon the application of Hazelwood, Inc. Assuming for the purpose of this opinion but not conceding, that the three issues proposed to be included in the hearing are proper for the Commission to consider, petitioner has utterly failed to show that the insertion of these additional three issues in the hearing at this time on the application of Hazelwood, Incorporated, would expedite the disposition of this application and not merely result in a more costly, drawn out, and complicated record, with no attendant advantages to the Commission or to the public.

For the foregoing reasons, the petition to enlarge issues is denied.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Anthracite Water Company

[Application Docket No. 53771.]

Payment, § 42 — Service discontinuance to enforce — Fire protection to municipalities.

A water company cannot discontinue water to a municipality for fire protection upon the municipality's failure to pay for the service rendered, since a municipality does not come within the purview of the provision of the

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Law which authorizes a public utility to discontinue service to a patron for nonpayment of a bill.

[September 5, 1939.]

APPLICATION *for approval of discontinuance of the service of water for fire protection to municipality; refused.*

By the COMMISSION: In accordance with the provisions of the Public Utility Law and the Act of July 12, 1935, P. L. 660, 15 P. S. § 1463, the Anthracite Water Company sought a certificate of public convenience evidencing our approval of the discontinuance of public fire protection service in the borough of Gilberton, Schuylkill county.

Initial hearing in this matter was held in Pottsville on September 12, 1938. After due consideration of all facts presented at that hearing, we issued an order on January 17, 1939, denying the petition. On February 6, 1939, applicant petitioned us for a rehearing and reconsideration of the application, praying for authority to discontinue service, and, if such authority were again denied, to be advised of the reasons therefor, as well as to be informed of its duties and liabilities in connection with continuing the rendition of this service to the borough "free of charge." The prayer of the petition for rehearing and reconsideration was granted and a second hearing was held in Pottsville on February 27, 1939.

It appears to us that so long as the petitioner continues to furnish the fire service, render a bill therefor, and enter the charge upon its books, and so long as the borough has not requested the termination of the service and of the service contract, the service will not be rendered "free of charge," even though the charges may remain unpaid. The record does not disclose any denial on the part of the borough of liability for payment of this service. In fact, the borough has freely admitted liability for payment of the charges levied for fire protection service, but pleads a present inability to meet the charges by reason of financial conditions beyond its control.

Prior to 1932, applicant furnished water for public fire protection purposes, without charge, to the borough of Gilberton. By tariff duly filed and with notice to the borough, effective April 1, 1932, the present rate for public fire protection of $25 per annum, per fire hydrant, was established. Since that time a charge to the borough of $25 per annum, per fire hydrant, has been made. The borough has been delinquent in its payment from April 1, 1932. On May 25, 1938, applicant recovered a verdict in suit No. 399 in the court of common pleas of Schuylkill county, July 1936 term, against the borough in the sum of $3,621.41; $3,262.54 being charges for fire protection service from April 1, 1932, to July 1, 1936, and $358.87 being accrued interest. On January 15, 1939, additional charges and accrued interest had increased the sum then due applicant from the borough to $5,735.06.

Applicant, having been unsuccessful

in collecting all or any of this debt, is now seeking our approval for discontinuance of its public fire protection service in the borough of Gilberton, relying on its right thereto by virtue of the provisions of the Act of July 12, 1935, P. L. 660. This act is here quoted in full:

"Section 1. Be it enacted, &c., That it is unlawful for any person, copartnership, association, or corporation operating as a water company and who, or which, has undertaken to supply any city, borough, town, or township with water for the purpose of fire protection, for any reason whatsoever, to cut off, or otherwise refuse to continue, the supply of water for such purposes, unless, and until, water for such purposes is available from other sources, without first having secured the approval of the Public Service Commission of the commonwealth of Pennsylvania, evidenced by its certificate of public convenience, authorizing discontinuance of such service.

"Section 2. If any such city, borough, town, or township fails to pay any service charge or to pay for any water used for which it is responsible, the water company may proceed against such city, borough, town, or township in an action of assumpsit and reduce its claim to judgment, which judgment shall be enforced as other judgments against such cities, boroughs, towns, or townships are enforced."

There is water in a creek flowing through Gilberton at no great distance from the built-up portion of the borough. This water, however, cannot be considered as being available for public fire protection purposes particularly by reason of the fact that the creek is fed by mine drainage containing sulphur and culm, and by sewage from the whole Mahanoy valley. Therefore, the provision of § 1 of the Act of 1935, *supra*, in so far as it relates to a supply of water "available from other sources," is not applicable.

Section 202 of the Public Utility Law as amended by the Act of September 28, 1938, P. L. 44, states, inter alia:

"Section 202. Enumeration of Acts Requiring Certificate.—Upon approval of the Commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, and not otherwise, it shall be lawful: . . .

"(d) For any public utility to dissolve, or to abandon or surrender, in whole or in part, any service, right, power, franchise, or privilege: Provided, that . . . the provisions of this paragraph shall not apply to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron."

Under this section of the Public Utility Law, it is very clear that no certificate from the Public Utility Commission is required for a public utility to discontinue service to a patron where the patron refuses to pay for service rendered. The legislative reason is clear. No utility should be required to continue service to patrons who refuse to pay for such service when the amount of money involved would entail a larger expenditure for collection through courts of law. The average domestic or residential water, electric, or gas bill is less than $10. It certainly would not be wise

for the legislature to compel a utility to render service to a customer who refused to pay a bill in that amount, if collection of the bill through legal channels would cost more than $10 by way of attorneys' fees and ordinary costs of litigation.

This reasoning, however, does not apply to the Act of 1935, *supra,* relating to municipal corporations. If the legislature had intended to include municipal corporations within subsec. (d) of § 202 of the Public Utility Law, it would have specifically repealed the Act of 1935 and included such repeal under § 1502 of the Public Utility Law by specific reference thereto. This was not done. It seems very clear to us that the legislature intended that the Act of 1935, P. L. 660, should remain upon the statute books as a modification of § 202(d) of the Public Utility Law.

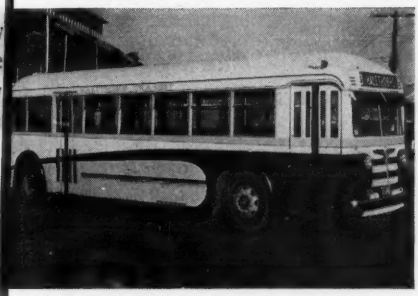
The ordinary bill of a municipality for service rendered by a public utility is much larger in amount than that of a residential patron. The reason for permitting the public utility to discontinue service to a residential consumer does not apply to a municipal corporation as the amount involved would be invariably in excess of the cost of collection. Likewise, the borough code provides a method for the collection of debts against a municipality. The public utility has access to those remedies and in theory at least can compel such payment.

There is another reason which compels the Commission to dismiss the petition in this case. Fire protection is one benefit which is expected to be derived from a municipal government. Failure to provide adequate fire protection is a failure of government itself. If necessary in an emergency, the police power will permit government to commandeer facilities for the protection of its citizens from fire, flood, or other public disasters.

The petitioner has its remedy at law for the collection of the obligation due from the respondent. This remedy should be pursued for the reasons herein set forth.

Inside

and Outside



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$3,000,000 To Be Spent by Ohio Utility on Expansion

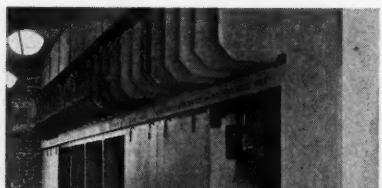
A CONSTRUCTION program involving the expenditure of approximately $3,000,000 for the building of new facilities, extension of service lines and rehabilitation of present equipment, has been planned for 1940 by the Ohio Public Service Company. The company's 1939 budget amounted to about $1,000,000.

The largest item on the 1940 program is a $2,000,000 addition to the company's plant at Warren, Ohio, where a 40,000-kilowatt turbo-generator will be installed.

In addition, the program calls for construction of a $125,000 sub-station in Mansfield.

A New Cell Structure Material Announced by Johns-Manville

A NEW dry-construction cell structure material for housing bus bars, transformers and other high voltage equipment was re-



cently announced by Johns-Manville. Formed from asbestos with an inorganic binder, this new material is furnished in large panels which, because of their basically mineral composition, are completely non-combustible.

One of the outstanding features of Trancell, the manufacturer points out, is the simplicity with which strong, compact structures can be erected without the necessity for forms or water. Neat, clean, finished housings can be made with ordinary hand or power tools.

The relatively light weight of Trancell—as low as 42½ lb. per cu. ft. in one type—permits housing equipment on balconies and upper floors without danger of overloading. The strength of the material, as shown by exhaustive laboratory tests, is adequate to support equipment and withstand normal stresses with structure walls and shelves of minimum thickness.

Cell structure doors that need no stiles, rails, metal trim or other reinforcement are also made of Trancell. Cell structures and doors of this material meet the vital requirements of safeguarding station operators and preventing accidental contacts between phases, circuits or grounds, as well as confining within restricted spaces the products of combustion or ionized gases which are generated by fire or electric arc.

The Trancell panels are supplied in a variety of types—some being faced with asbestos-cement sheets on one or both sides. The material comes in sizes ranging from 36 in. by 48 in. to 48 in. by 96 in. and in thicknesses from ¼ in. to 2¼ in. Trancell doors with the desired standard hardware attached are furnished cut to size.

A Tribute to G-E's Retiring Leaders

THE contributions of Owen D. Young and Gerard Swope during the years they served as chairman of the board and president of General Electric is expressed in the following tribute written by an official of the company who has been closely associated with both:

"Mr. Young, General Electric's retiring chairman, has had one of the most constructive and interesting careers in the annals of American business. He has, in his various internal and external activities, won a reputation among many as one of the keenest and most wholesome philosophers of his time; among others, he is an international financier to whom the intricacies of the European reparations problem were as so many A-B-C's; to still others he stands as one of the greatest authorities on the operations of the Federal Reserve Bank; to social workers and his associates on the New York State Board of Regents he is a sympathetic authority on the problems of youth and education.

"To his close General Electric associates Mr. Young will be remembered as a man with an uncanny insight into the problems of getting capital, management, and men to work smoothly together toward a common objec-

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e new "Eveready" Safety Flashlights are of high quality semi- rubber reinforced with brass, with unbreakable, plastic lenses, l protected lamp and hand-replaceable, heavy-duty slide h with positive "off" and "on" positions. Hexagonal heads ent rolling, ring-hangers add to convenience.

veready" Safety Flashlights resist water, oils, greases, gaso- alcohol, acids, alkali, are non-conducting and proof against ct and dropping.

Guard wire holds lamp in spring-loaded socket. Should bulb break, spring ejects lamp-base, instantly opening electric circuit and thrusting hot filament against chilling guard wire.

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tive and as the man who, amid the gloomy forebodings of lawyers, strode into the complicated post-war radio situation in this country, with important patents owned by diverse companies, to lay out a workable scheme of unified operation, thereby literally creating a great industry. And to his associates he will be remembered as the co-worker and teammate of Gerard Swope in maintaining and carrying forward General Electric leadership —not only in the electrical industry but in all industry—in the field of sound employee relations.

"Gerard Swope, retiring president, will always be remembered among General Electric men of this generation as a dynamic driving force. No one could come in contact with him without feeling the intensity of his nature and his unalterable devotion to the interests of General Electric. But, with all his genius for getting things done, one of the most important associates said recently: 'In all my years of work with Gerard Swope he never ordered me to do anything.'

"When Mr. Swope took up the reins as president in 1922, General Electric was hardly a factor in the electric appliance business of this country. At the time he retires, the name General Electric is known in every electrified home in America and G-E sales of appliances have helped to build hundreds of millions of kilowatts in load for the public utilities.

"By virtue of his training in the three important operating fields of manufacturing, sales, and engineering as well as in finance, Mr. Swope made his influence felt in every corner of our far-flung operations. To every man he could speak in his own vernacular.

"The rank and file of employees came to know Mr. Swope better than almost any other General Electric leader. His meetings in the shops with great numbers of men—during which he subjected himself to questions on any subject—and his terse, well-informed comments were famous among his hearers.

"His leadership in employee relations, development of General Electric's original and courageous plan of unemployment insurance, and unique savings and insurance plans gradually led to his nation-wide recognition as a man who was well ahead of other business heads in vision and sympathy for the welfare of the most humble worker."

Alabama Power Co. Will Spen $6,165,000 for Construction

THE Alabama Power Company has s aside $6,165,000 for construction wo during the coming year, according to an a nouncement recently issued by Thomas W Martin, president.

In the $6,000,000 building fund were allo ments of more than $1,000,000 for extensi of service into additional rural areas of th state. Erection of proposed lines would brin rural mileage built by Alabama Power Com pany to more than 7,900 miles, serving 43,00 rural customers.

Nearly $2,000,000 has been set aside for im provement of the electric power supply Mobile and in construction of the new Mobi steam power plant, which is scheduled fo completion in 1941, according to the announce ment.

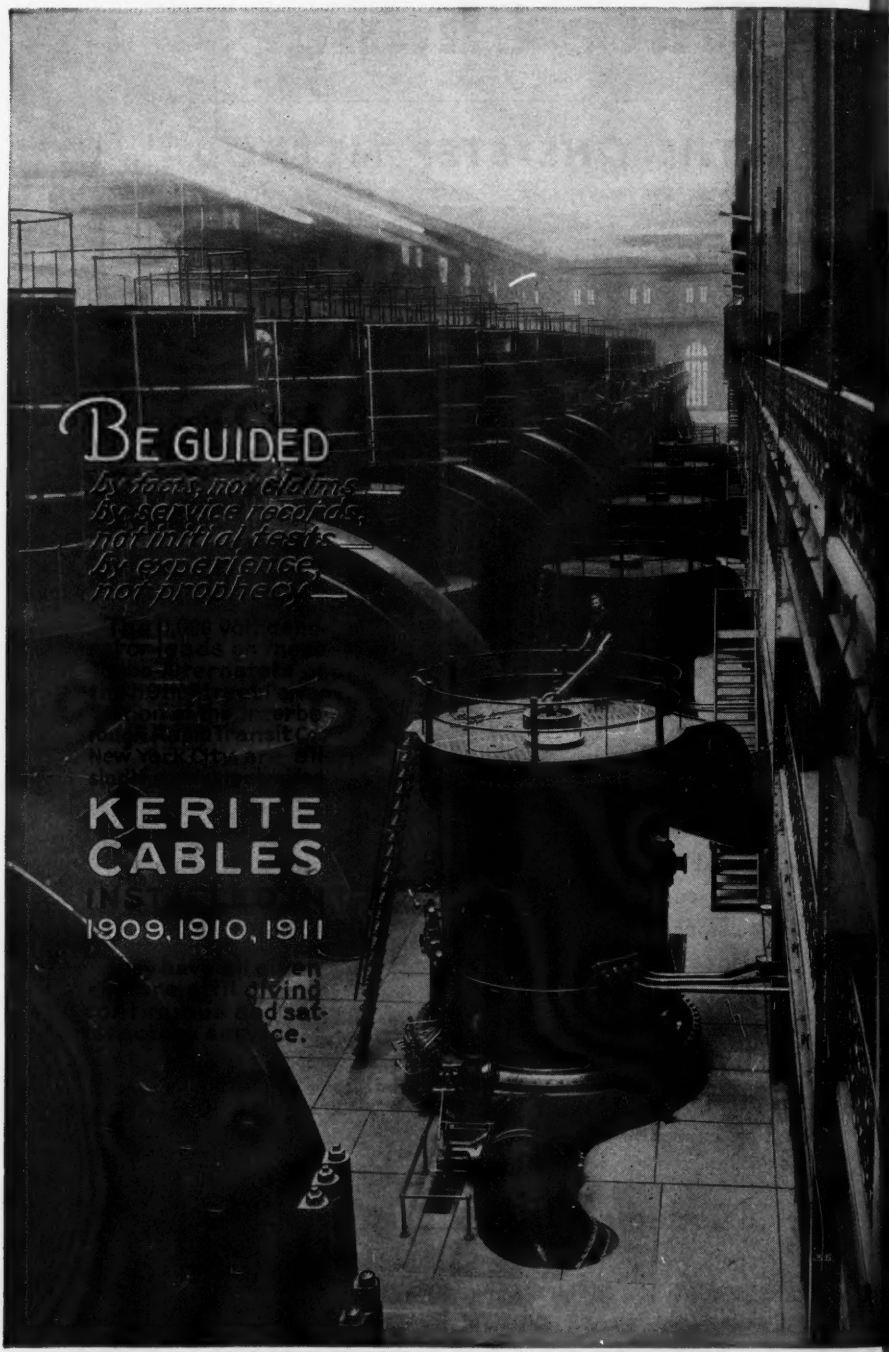
Additional lines, equipment and service im provements will be made in the transmissio and distribution system. Work of this natur provides for expenditure of $347,000 in th Montgomery district and $160,000 in the Tus caloosa district.

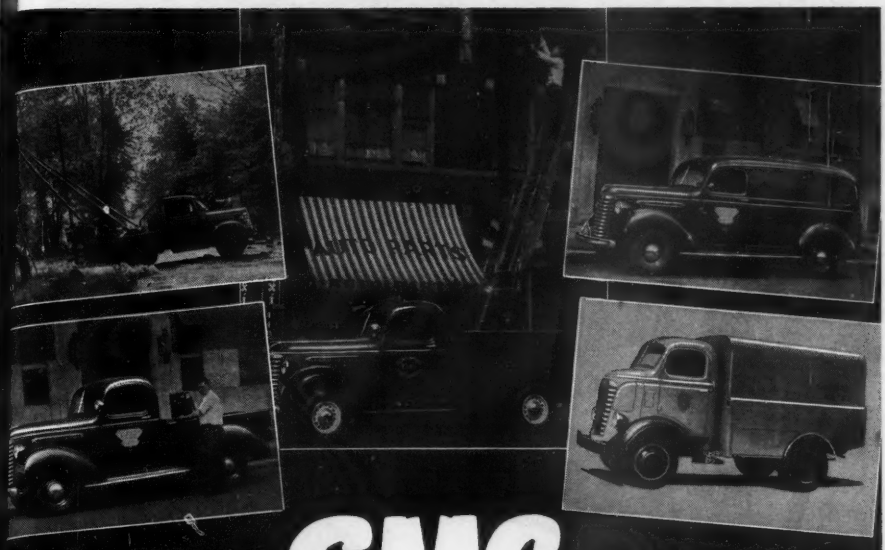
Stepped Reflectors Increase Lamp Life in G-E Luminaires

To assure full lamp life in street lightin luminaires and to increase mercury lumi naire efficiency, General Electric lighting engi neers have designed a new luminaire with 4 vertical steps or offsets in the reflector. Thi design was effected to eliminate a conditio common to deep bowl reflectors in which ex cessive heat concentrations frequently cause premature lamp failures, particularly whe 500-watt or 10,000-lumen lamps were used Rays of light emanating from the lamp op erating within a smooth reflector were foun to be reflected through a focal axis in suc a way to cause a high concentration of radian energy at some point on this axis. The lam stem, filament leads and supports were thu left exposed to destructive heating.

This problem has been relieved by die forming the reflectors, of the same genera contour as the smooth type, with 48 vertica offsets. With this stepped surface the hea rays as well as the light rays are reflected around the focal axis and lamp stem. Fiel experience and laboratory tests demonstrated that this eliminates the concentration of heat energy and retains the high efficiency and de sirable distribution characteristics of the luminaire.

These steps have been found to provide an additional advantage when used with mercury lamps. With smooth reflectors, luminaire efficiency is usually impaired because of the absorption of reflected light in the mercury arc in addition to the undesirable heat concentration. By reflecting the light around the arc the new stepped design effectively solves both of these difficulties, according to the manufacturer.





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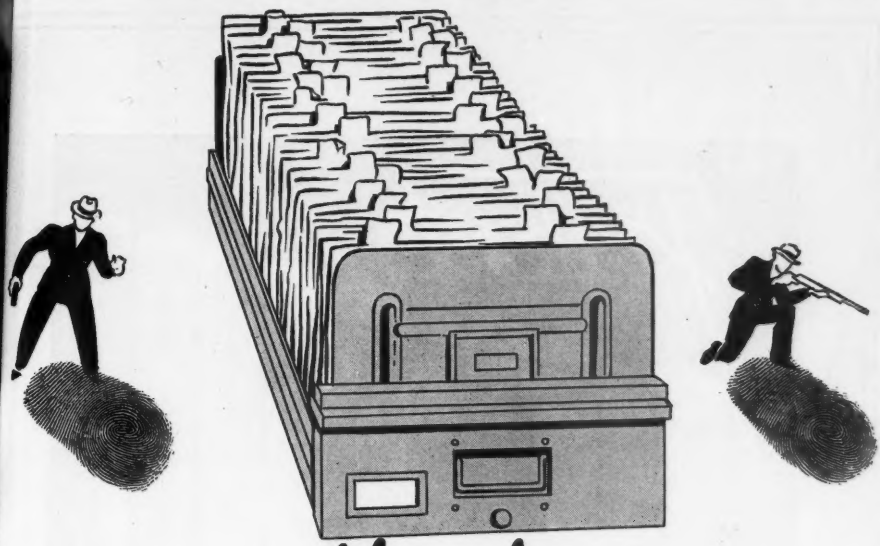

HERE'S A *thief* IN DEPT. A

Those dog-eared, crumpled forms and cards with blurred entries and sloppy erasures betray an insidious thief in your mechanical accounting department. They are evidence that inadequate paper is robbing the efficiency of your expensive bookkeeping machines and wasting the time of your well paid clerical staff.

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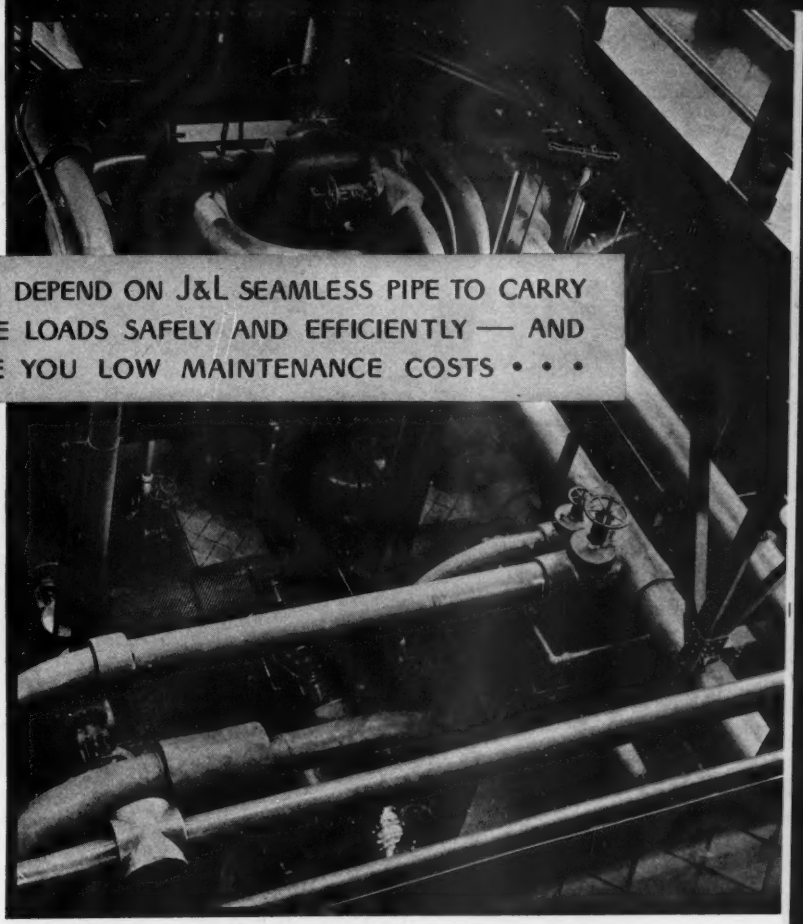

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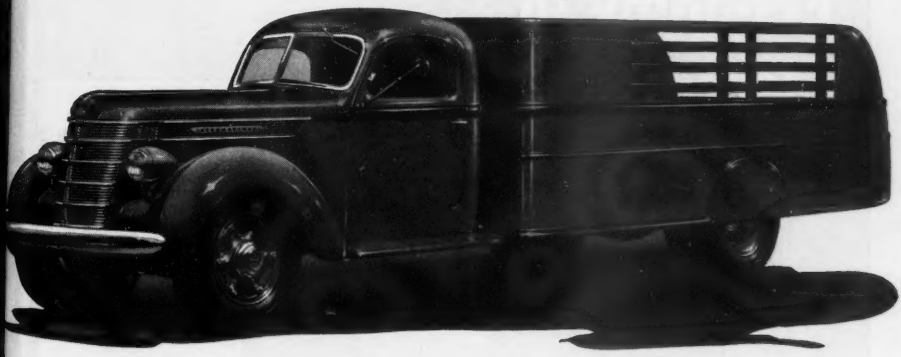
. . but you get a lot more than style for our money in these 1½-ton Internationals



his picture of the 1½-ton Model D-30 doesn't lf do justice to the truck. It gives you a good ea of the modern streamlined beauty of Interational Trucks, but it doesn't tell you a thing about e amazing economy of the trucks on your job. rivers and owners can tell you about that.

It takes more than just style to deliver International performance. A new line is not just a atter of the calendar with International Harvester. onstant improvements in engineering and conruction *make* and *keep* International Trucks the tandard for the industry.

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Public Utilities

FORTNIGHTLY

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Including the Issues of July 6, 1939
to December 21, 1939

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Index to Public Utilities Reports

(This section of the magazine, which comprises the decisions, orders, and recommendations of courts and commissions, is too voluminous to be included in this index. These reports are published annually in their entirety, in five bound volumes, together with the Annual Digest; copies may be obtained from publishers, PUBLIC UTILITIES REPORTS, INC., *Munsey Building, Washington, D. C., upon application.)*

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